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COMMISSIONERS

TITLES 63-66

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2014 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports

Pacific Reporter, 3rd Series

Federal Supplement, 2nd Series

Federal Reporter, 3rd Series

United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

Idaho R. Civ. P.

Idaho Evidence Rule

Idaho R. Crim. P.

Idaho Misdemeanor Crim. Rule

I.I.R.

I.J.R.

I.C.A.R.

Idaho App. R.

Idaho Rules of Civil Procedure

Idaho Rules of Evidence

Idaho Criminal Rules

Misdemeanor Criminal Rules

Idaho Infraction Rules

Idaho Juvenile Rules

Idaho Court Administrative Rules

Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

**ADJOURNMENT DATES OF SESSIONS OF
LEGISLATURE**

Year	Adjournment Date
2008	April 2, 2008
2009	May 8, 2009
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012
2013	April 4, 2013
2014	March 20, 2014

TITLE 63

REVENUE AND TAXATION

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CHAPTER 1

DEPARTMENT OF REVENUE AND TAXATION

SECTION.

- 63-102. Organization — Chairman — Compensation — Quorum — Hearings.
- 63-103. Employees — Compensation — Expenses.

SECTION.

- 63-105A. Powers and duties — Property tax.
- 63-110. Property and special taxes.
- 63-117. Payment of taxes by credit card and other commercially acceptable means.

63-102. Organization — Chairman — Compensation — Quorum — Hearings. — (1) A member of the state tax commission shall be appointed by the governor, to serve at his pleasure, as chairman. Each member of the state tax commission shall devote full time to the perfor-

mance of duties. Commencing on July 1, 2014, the annual salary for members of the state tax commission shall be eighty-eight thousand twenty-eight dollars (\$88,028).

(2) A majority of the state tax commission shall constitute a quorum for the transaction of business. The state tax commission may delegate to any member of the commission or to its employees, the power to make investigations and hold hearings at any place it may deem proper, and such other matters as will facilitate the operations of the commission.

(3) The chairman of the state tax commission shall delegate to each commissioner the responsibility for policy management and oversight of one (1) or more of the taxes collected and/or activities supervised or administered by the commission. The state tax commission shall perform the duties imposed upon it by law and shall adopt all rules by majority decision.

In any case in which the state tax commission sits as an appellate body upon an appeal from a tax decision from one (1) of the various administrative units subject to its supervision, the state tax commissioner charged with responsibility for policy management and oversight of the tax in controversy shall not vote upon the appeal but may advise the remaining members of the commission on the technical aspects of the problems before them.

(4) The chairman shall be the chief executive officer and administrative head of the state tax commission and shall be responsible for, or may assign responsibility for, all personnel, budgetary and/or fiscal matters of the state tax commission.

History.

I.C., § 63-102, as added by 1996, ch. 98, § 2, p. 308; am. 1997, ch. 169, § 1, p. 483; am. 1998, ch. 358, § 3, p. 350; am. 2000, ch. 359, § 2, p. 1195; am. 2001, ch. 279, § 1, p. 1008;

am. 2004, ch. 281, § 2, p. 774; am. 2006, ch. 368, § 2, p. 1106; am. 2007, ch. 121, § 2, p. 370; am. 2008, ch. 285, § 2, p. 807; am. 2012, ch. 224, § 2, p. 610; am. 2014, ch. 316, § 2, p. 780.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 285, substituted “eighty-five thousand four hundred forty-seven dollars (\$85,447)” for “eighty-two thousand nine hundred fifty-nine dollars (\$82,959)” in subsection (1).

The 2012 amendment, by ch. 224, substituted “Commencing on July 1, 2012, the annual salary for members of the state tax commission shall be eighty-seven thousand one hundred fifty-six dollars (\$87,156)” for “Commencing on July 1, 2008, the annual salary for members of the state tax commission shall be eighty-five thousand four hundred forty-seven dollars (\$85,447).”

The 2014 amendment, by ch. 316, substituted “July 1, 2014” for “July 1, 2012” and substituted “eighty-eight thousand twenty-eight dollars (\$88,028)” for “eighty-seven thousand one hundred fifty-six dollars (\$87,156)” in the last sentence in subsection (1).

Compiler's Notes.

Section 7 of S.L. 2014, ch. 316 provided: “Notwithstanding any other provision of law to the contrary, commissioner salaries referenced in Sections 1, 2 [this section] and 3 of this act shall be increased by the equivalent of 1% for the period July 1, 2014, through June 30, 2015.”

63-103. Employees — Compensation — Expenses. — (1) The state tax commission may employ an officer who shall serve as secretary of the commission and shall also employ such other persons as may be necessary for the performance of its duties. Certain of its employees may be designated

as deputies who shall perform such duties as prescribed by the state tax commission. The state tax commission may delegate to any of its employees the duty of assisting in the collection, audit, inspection and enforcement of any tax or license and may authorize any of its employees to act in its place and stead. The state tax commission may delegate any other function, responsibility or duty imposed upon the commission to one (1) or more commissioners or deputy commissioners; provided however, where the amount in issue relating to the tax liability of any taxpayer is equal to or exceeds fifty thousand dollars (\$50,000), and the commission has delegated the authority to compromise such liability to an individual commissioner, the settlement or closing agreement procedure shall be governed by the provisions of section 63-3048, Idaho Code.

(2) The compensation of all state tax commission employees shall be paid upon the same basis and in the same manner as the compensation of other state employees is paid.

(3) The traveling expenses of the members of the state tax commission and its employees when traveling in performance of official duty, and other necessary expenses incurred in performance of its duties, shall be paid upon the same basis and in the same manner as the expenses of other state employees are paid.

History.

I.C., § 63-103, as added by 1996, ch. 98, § 2, p. 308; am. 1997, ch. 173, § 1, p. 491; am. 2009, ch. 120, § 1, p. 384.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 120, in subsection (1), substituted "the settlement or closing agreement procedure shall be governed by the provisions of section 63-3048, Idaho Code" for "the compromise agreement shall be executed by at least one (1) commis-

sioner in addition to the delegated commissioner" in the present last sentence and deleted the former last two sentences, which read: "The commission shall adopt guidelines to govern review of compromise agreements. The state tax commission may employ counsel, or may retain counsel."

63-105A. Powers and duties — Property tax. — The state tax commission shall be the state board of equalization. In addition to other powers and duties vested in it, the state tax commission shall have the power and duty:

(1) To supervise and coordinate the work of the several county boards of equalization.

(2) To secure, tabulate and keep records of valuations of all classes of property throughout the state, and for that purpose, to have access to all records and files of state offices and departments and county and municipal offices, and to require all public officers and employees whose duties make it possible to ascertain valuations, including valuations of public utilities for rate-making purposes, to file reports with the state tax commission, giving such information as to valuation and the source thereof. The nature and kind of the tabulations, records of valuations and requirements from public officers as stated herein, shall be in such form and cover such valuations as the state tax commission may prescribe.

(3) To coordinate and direct a system of property taxation throughout the state.

(4) To require all assessments of property in this state to be made according to law; and for that purpose to correct, when it finds the same to be erroneous, any assessments made in any county, and require correction of the county assessment records accordingly.

(5) To prescribe forms and to specify and require information with relation to any duty or power of the state tax commission except as provided in section 63-219, Idaho Code.

(6) To instruct, guide, direct and assist the county assessors and county boards of equalization as to the methods best calculated to secure uniformity in the assessment and equalization of property taxes, to the end that all property shall be assessed and taxed as required by law.

(7) To reconvene, whenever the state tax commission may deem necessary, any county board of equalization, notwithstanding the limitations of chapter 5, title 63, Idaho Code, for equalization purposes and for correction of errors. The county board of equalization, when so reconvened, shall have no power to transact any business except that for which it is specially reconvened, or such as may be brought before it by the state tax commission.

(8) To require prosecuting attorneys to institute and prosecute actions and proceedings in respect to penalties, forfeitures, removals and punishments for violations of law in connection with the assessment and taxation of property. It shall be the duty of such officers to comply promptly with the requirements of the state tax commission in that relation.

(9) To require individuals, partnerships, companies, associations and corporations to furnish such information as the state tax commission may require concerning their capital, funded or other debt, current assets and liabilities, value of property, earnings, operating and other expenses, taxes and all other facts which may be needed to enable the state tax commission to ascertain the value and the relative tax burden borne by all kinds of property in the state, and to require from all state and local officers such information as may be necessary to the proper discharge of the duties of the state tax commission.

(10) To visit, as a state tax commission or by individual members or agents thereof, whenever the state tax commission shall deem it necessary, each county of the state, for the investigation and direction of the work and methods of assessment and equalization, and to ascertain whether or not the provisions of law requiring the assessment of all property, not exempt from taxation, and just equalization of the same have been or are being properly administered and enforced.

(11) To carefully examine all cases where evasion or violation of the laws of assessment and taxation of property is alleged, complained of, or discovered, and to ascertain wherein existing laws are defective or are improperly or negligently administered.

(12) To correct its own errors in property assessment at any time before the first Monday in November, and report such correction to the county auditor and county tax collector, who shall thereupon enter the correction upon the operating property roll.

(13) To apportion annually to the state and the respective counties any moneys received by the state from the United States or any agency thereof, as payments in lieu of property taxes; provided, that said moneys shall be apportioned in the same amounts, and to the same governmental divisions as the property taxes, in lieu of which payments are made, would be apportioned, if they were levied. The state treasurer and the state controller shall be bound, in making distribution of moneys so received, by the apportionment ordered by the state tax commission.

(14) To make administrative construction of property tax law whenever necessary or requested by any officer acting under such laws and until judicially overruled, such administrative construction shall be binding upon the inquiring officer and all others acting under such laws.

(15) To require the attendance of any assessor in the state at such time and place as may be designated by the commission, and the actual and necessary expenses of any assessor in attending any such meeting shall be a legal claim against his county.

(16) To analyze the work of county assessors at any time and to have and possess all rights and powers of such assessors for the examination of persons and property, and for the discovery of property subject to taxation; and if it shall ascertain that any taxable property is omitted from the property rolls or is not assessed or valued according to law, it shall bring the same to the attention of the assessor of the proper county in writing, and if such assessor shall neglect or refuse to comply with the request of the state tax commission to place such property on the property rolls, or correct such incorrect assessment or valuation, the tax commission shall have the power to prepare a supplemental roll, which supplemental roll shall include all property required by the tax commission to be placed on the property roll and all corrections to be made. Such supplement shall be filed with the assessor's property roll, and shall thereafter constitute an integral part thereof to the exclusion of all portions of the original property rolls inconsistent therewith, and shall be submitted therewith to the county board of equalization.

(17) To provide a program of education and an annual appraisal school for its employees, for county commissioners and for the assessors of the various counties of this state. Additionally, the state tax commission shall provide for the establishment of a property tax appraiser and cadastral certification program. Such program shall include, as a minimum, a written examination prepared, administered and graded under the supervision and control of an examination committee; such committee is to be composed as the state tax commission may provide by rule. The state tax commission's rules shall include, but need not be limited to, the following:

(a) The composition of the examination committee, provided however, that the committee shall include a representative of the counties, an agent of the state tax commission and a representative of a professional appraisal association within this state. The representative of the counties together with the representatives of such professional appraisal association shall constitute a majority of the committee.

(b) The frequency with which the examination shall be given.

(c) A reasonable review procedure by which examinees having complaints may seek review of the examination committee.

(d) The establishment of a reasonable period of time within which a county appraiser must meet the certification requirements as a condition to continued employment by the county as a certified property tax appraiser.

(18) To report at least quarterly to the revenue and taxation committee of the house of representatives and to the joint senate finance-house appropriations committee on its program to assist the counties with the property tax assessments.

(19) To transmit to the governor and to the legislature, an annual report, with the state tax commission's recommendations as to such legislation as will correct or eliminate defects in the operations of the property tax laws and will equalize taxation within the state. Said annual report shall include a comprehensive study of the property tax laws and detailed statistical information concerning the operation of the property tax laws of this state. Said report shall be submitted prior to the meeting of any regular session of the legislature.

(20) To maintain a forest land and forest product tax section to perform the functions and duties of the state tax commission under the provisions of chapter 17, title 63, Idaho Code.

History.

I.C., § 63-105A, as added by 1996, ch. 98, § 2, p. 308; am. 1998, ch. 200, § 1, p. 713; am. 2008, ch. 52, § 1, p. 128.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 52, in the introductory paragraph in subsection (17),

inserted "and cadastral" in the second sentence.

63-110. Property and special taxes. — The state tax commission must complete the equalization of assessments throughout the state during its meeting as the state board of equalization, after receipt of each county auditor's abstract of the property roll, no later than the fourth Monday of August in the year in which such assessments are made, and, if there is to be a state property tax, shall on that day determine the amount of state property tax which each county must collect and remit to the state, by apportioning the total state property tax among the several counties in the state in the exact proportion that the total equalized valuation of each county, as shown by the property roll for the current year, and the subsequent and missed property rolls for the preceding year, bears to the total equalized valuation of the state from such rolls of all the counties in the state. The state tax commission shall also determine the amount of special state taxes, if any, which each county must collect and remit to the state, and the total amount of such state property and special state taxes found to be due from each county shall be certified to the county auditor of such county by the chairman of the state tax commission, and the county auditor shall, upon receipt of such certificate, file the same in his office; provided, that the total amount of all special state taxes levied for the current year

upon property entered upon the subsequent and missed property rolls of each county for such year shall be certified to the county auditor of such county by the chairman of the state tax commission upon receipt of the county auditor's abstract of the subsequent and missed property rolls.

History.

I.C., § 63-110, as added by 1996, ch. 98, § 2, p. 308; am. 2014, ch. 77, § 1, p. 202.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 77, substituted "during its meeting as the state board of equalization, after receipt of each county auditor's abstract of the property roll, no later than the fourth Monday of August" for "on the fourth month of August" near the beginning of the section.

Effective Dates.

Section 4 of S.L. 2014, ch. 77 declared an emergency and made this section retroactive to January 1, 2013.

63-117. Payment of taxes by credit card and other commercially acceptable means. — (1) The state tax commission, in cooperation with the state treasurer, may accept payment by credit card, debit card or other commercially acceptable means, including through an electronic payment processor, from any person making any payment to the state tax commission of taxes or other amounts due under any law administered by the commission. If the payment is made by credit card, debit card, charge card, or similar method, the liability is not finally discharged and the person has not paid the tax until the department receives payment or credit from the institution responsible for making the payment or credit. Upon receipt, the amount shall be deemed paid on the date the charge was made.

(2) The commission may pay, through discount or otherwise, any fee to a financial institution, credit card company or electronic payment processor, for a payment made pursuant to this section from the proceeds of the taxes or other amounts paid prior to any other distribution of the proceeds required by law. The necessary portion of the proceeds collected under this section is hereby appropriated for the purpose of paying the fee.

History.

I.C., § 63-117, as added by 1999, ch. 113, § 1, p. 340; am. 2012, ch. 5, § 1, p. 8.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 5, inserted "including through an electronic payment processor" near the middle of the first sen-

tence in subsection (1) and inserted "or electronic payment processor" near the beginning of the first sentence in subsection (2).

CHAPTER 2

DEFINITIONS — GENERAL PROVISIONS

SECTION.

63-201. Definitions.

63-205A. Assessment — Market value for assessment purposes of section 42 low-income properties.

63-205B. Assessment of operating property of rate regulated electric utility companies.

SECTION.

63-215. Legal description and map of boundaries to be recorded and filed.

63-217. Filing of material by mail or private delivery services.

63-218. Reproduction of records — Destruction of originals authorized — Admissibility in evidence.

63-201. Definitions. — As used for property tax purposes in chapters 1 through 23, title 63, Idaho Code, the terms defined in this section shall have the following meanings, unless the context clearly indicates another meaning:

(1) “Appraisal” means an estimate of property value for property tax purposes.

(a) For the purpose of estimated property value to place the value on any assessment roll, the value estimation must be made by the assessor or a certified property tax appraiser.

(b) For the purpose of estimating property value to present for an appeal filed pursuant to sections 63-501A, 63-407 and 63-409, Idaho Code, the value estimation may be made by the assessor, a certified property tax appraiser, a licensed appraiser, or a certified appraiser or any party as specified by law.

(2) “Bargeline” means those water transportation tugs, boats, barges, lighters and other equipment and property used in conjunction with waterways for bulk transportation of freight or ship assist.

(3) “Cogenerators” means facilities which produce electric energy, and steam or forms of useful energy which are used for industrial, commercial, heating or cooling purposes.

(4) “Collection costs” are amounts authorized by law to be added after the date of delinquency and collected in the same manner as property tax.

(5) “Credit card” means a card or device, whether known as a credit card or by any other name, issued under an arrangement pursuant to which a card issuer gives to a cardholder the privilege of obtaining credit from the card issuer or other person in purchasing or leasing property or services, obtaining loans, or otherwise.

(6) “Debit card” means any instrument or device, whether known as a debit card or by any other name, issued with or without a fee by an issuer for the use of the cardholder in depositing, obtaining or transferring funds.

(7) “Delinquency” means any property tax, special assessment, fee, collection cost, or charge collected in the same manner as property tax, that has not been paid in the manner and within the time limits provided by law.

(8) “Electronic funds transfer” means any transfer of funds that is initiated by electronic means, such as an electronic terminal, telephone, computer, ATM or magnetic tape.

(9) “Fixtures” means those articles that, although once movable chattels, have become accessory to and a part of improvements to real property by

having been physically incorporated therein or annexed or affixed thereto in such a manner that removing them would cause material injury or damage to the real property, the use or purpose of such articles is integral to the use of the real property to which it is affixed, and a person would reasonably be considered to intend to make the articles permanent additions to the real property. "Fixtures" includes systems for the heating, air conditioning, ventilation, sanitation, lighting and plumbing of such building.

(10) "Floating home" means a floating structure that is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling.

(11) "Improvements" means all buildings, structures, manufactured homes, as defined in section 39-4105(8), Idaho Code, mobile homes as defined in section 39-4105(9), Idaho Code, and modular buildings, as defined in section 39-4301(7), Idaho Code, erected upon or affixed to land, fences, water ditches constructed for mining, manufacturing or irrigation purposes, fixtures, and floating homes, whether or not such improvements are owned separately from the ownership of the land upon or to which the same may be erected, affixed or attached. The term "improvements" also includes all fruit, nut-bearing and ornamental trees or vines not of natural growth, growing upon the land, except nursery stock.

(12) "Late charge" means a charge of two percent (2%) of the delinquency.

(13) "Lawful money of the United States" means currency and coin of the United States at par value and checks and drafts which are payable in dollars of the United States at par value, payable upon demand or presentment.

(14) "Legal tender" means lawful money as defined in subsection (13) of this section.

(15) "Market value" means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

(16) "Operating property" means real and personal property operated in connection with any public utility, railroad or private railcar fleet, wholly or partly within this state, and which property is necessary to the maintenance and operation of the public utility, railroad or private railcar fleet, and the roads or lines thereof, and includes all rights-of-way accompanied by title; roadbeds; tracks; pipelines; bargelines; equipment and docks; terminals; rolling stock; equipment; power stations; power sites; lands; reservoirs, generating plants, transmission lines, distribution lines and substations; and all title and interest in such property, as owner, lessee or otherwise. The term includes electrical generation plants under construction, whether or not owned by or operated in connection with any public utility. For the purpose of the appraisal, assessment and taxation of operating property, pursuant to chapter 4, title 63, Idaho Code, the value of intangible personal property shall be excluded from the taxable value of operating property in accordance with the provisions of section 63-602L, Idaho Code, and the value of personal property, other than intangible personal property, shall be

excluded from the taxable value of operating property in accordance with the provisions of section 63-602KK, Idaho Code.

(17) "Party in interest" means a person who holds a properly recorded mortgage, deed of trust or security interest.

(18) "Person" means any entity, individual, corporation, partnership, firm, association, limited liability company, limited liability partnership or other such entities as recognized by the state of Idaho.

(19) "Personal property" means everything that is the subject of ownership and that is not included within the term "real property."

(20) "Private railcar fleet" means railroad cars or locomotives owned by, leased to, occupied by or franchised to any person other than a railroad company operating a line of railroad in Idaho or any company classified as a railroad by the interstate commerce commission and entitled to possess such railroad cars and locomotives except those possessed solely for the purpose of repair, rehabilitation or remanufacturing of such locomotives or railroad cars.

(21) "Public utility" means electrical companies, pipeline companies, natural gas distribution companies, or power producers included within federal law, bargelines, and water companies which are under the jurisdiction of the Idaho public utilities commission. The term also includes telephone corporations, as that term is defined in section 62-603, Idaho Code, except as hereinafter provided, whether or not such telephone corporation has been issued a certificate of convenience and necessity by the Idaho public utilities commission.

This term does not include cogenerators, mobile telephone service or companies, nor does it include pager service or companies, except when such services are an integral part of services provided by a certificated utility company, nor does the term "public utility" include companies or persons engaged in the business of providing solely on a resale basis, any telephone or telecommunication service which is purchased from a telephone corporation or company.

(22) "Railroad" means every kind of railway, whether its line of rails or tracks be at, above or below the surface of the earth, and without regard to the kind of power used in moving its rolling stock, and shall be considered to include every kind of street railway, suburban railway or interurban railway excepting facilities established solely for maintenance and rebuilding of railroad cars or locomotives.

(23) "Real property" means land and all rights and privileges thereto belonging or any way appertaining, all quarries and fossils in and under the land, and all other property which the law defines, or the courts may interpret, declare and hold to be real property under the letter, spirit, intent and meaning of the law, improvements and all standing timber thereon, including standing timber owned separately from the ownership of the land upon which the same may stand, except as modified in chapter 17, title 63, Idaho Code. Timber, forest, forest land, and forest products shall be defined as provided in chapter 17, title 63, Idaho Code.

(24) "Record owner" means the person or persons in whose name or names the property stands upon the records of the county recorder's office.

Where the record owners are husband and wife at the time of notice of pending issue of tax deed, notice to one (1) shall be deemed and imputed as notice to the other spouse.

(25) “Special assessment” means a charge imposed upon property for a specific purpose, collected and enforced in the same manner as property taxes.

(26) “System value” means the market value for assessment purposes of the operating property when considered as a unit.

(27) “Tax code area” means a geographical area made up of one (1) or more taxing districts with one (1) total levy within the geographic area, except as otherwise provided by law.

(28) “Taxing district” means any entity or unit with the statutory authority to levy a property tax.

(29) “Taxable value” means market value for assessment purposes, less applicable exemptions or other statutory provisions.

(30) “Transient personal property” is personal property, specifically such construction, logging or mining machinery and equipment which is kept, moved, transported, shipped, hauled into or remaining for periods of not less than thirty (30) days, in more than one (1) county in the state during the same year.

(31) “Warrant of distraint” means a warrant ordering the seizure of personal property to enforce payment of property tax, special assessment, expense, fee, collection cost or charge collected in the same manner as personal property tax.

History.

I.C., § 63-201, as added by 1996, ch. 98, § 3, p. 318; am. 1997, ch. 117, § 11, p. 310; am. 1997, ch. 286, § 1, p. 871; am. 1998, ch. 400, § 1, p. 1249; am. 2006, ch. 302, § 2, p.

931; am. 2008, ch. 53, § 1, p. 131; am. 2008, ch. 400, § 1, p. 1089; am. 2009, ch. 11, § 22, p. 14; am. 2009, ch. 163, § 1, p. 488; am. 2014, ch. 357, § 2, p. 886.

STATUTORY NOTES

Amendments.

This section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 53, added the definitions for credit card, debit card, electronic funds transfer, and legal tender and redesignated the existing subsections to accommodate them.

The 2008 amendment, by ch. 400, added the definitions for fixtures and floating home, rewrote the definitions for improvements, operating property, personal property and real property, and deleted the definition for manufactured home.

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 11, updated subsection designations throughout the section; and, in the introductory paragraph, substituted “chapters 1 through 23, title 63,

Idaho Code” for “title 63, chapters 1 through 23, Idaho Code.”

The 2009 amendment, by ch. 163, updated subsection designations throughout the section; and, in subsection (10), deleted “has no mode of power of its own, is dependent for utilities upon a continuous utility linkage to a source originating on shore, and has a permanent continuous connection to a sewage system on shore” from the end.

The 2014 amendment, by ch. 357, deleted the last sentence in subsection (9), which read: “Fixtures’ does not include machinery, equipment or other articles that are affixed to real property to enable the proper utilization of such articles.”

Compiler’s Notes.

S.L. 2014, Chapter 357 became law without the signature of the governor.

Effective Dates.

Section 10 of S.L. 2008, ch. 400 provided

that the act should take effect on and after January 1, 2009.

Section 8 of S.L. 2014, ch. 357 declared an

emergency and made this section retroactive to January 1, 2014.

JUDICIAL DECISIONS

Evidence of Value.

Landowners did not prove their own property appraisal, or any of their own comparables, to substantiate their claim that their property was overvalued, to suggest that the assessor did not locate enough comparables, or to show that the ones chosen

were inappropriate. *Kimbrough v. Idaho Bd. of Tax Appeals & Canyon County Bd. of Equalization* (In re Kimbrough), 150 Idaho 417, 247 P.3d 644 (2011).

Cited in: *Wurzburg v. Kootenai County*, — Idaho —, 308 P.3d 936 (Ct. App. 2013).

63-205. Assessment — Market value for assessment purposes.

JUDICIAL DECISIONS

ANALYSIS

Method of assessment.

Substantial evidence.

Method of Assessment.

Sales comparison approach to determining the market value of a vacant lakefront parcel was proper, even though the assessor did not go back in time as far as the taxpayer wanted or use only parcels on the same lake. *Wurzburg v. Kootenai County*, — Idaho —, 308 P.3d 936 (Ct. App. 2013).

erty appraisal, or any of their own comparables, to substantiate their claim that their property was overvalued, to suggest that the assessor did not locate enough comparables, or to show that the ones chosen were inappropriate. *Kimrough v. Idaho Bd. of Tax Appeals & Canyon County Bd. of Equalization* (In re Kimbrough), 150 Idaho 417, 247 P.3d 644 (2011).

Substantial Evidence.

Landowners did not prove their own prop-

63-205A. Assessment — Market value for assessment purposes of section 42 low-income properties. — (1) Section 42 of the Internal Revenue Code and related regulations govern the housing tax credit established under the 1986 tax reform act, as amended, and provides an incentive for developers to provide safe and sanitary housing for individuals and families earning no more than sixty percent (60%) of the area median income as determined by the U.S. department of housing and urban development (HUD), which income and rent restrictions remain in place as provided for in the tax credit regulatory agreement between the owner and the Idaho housing and finance association.

(2) The market value for assessment purposes of section 42 low-income properties shall be determined by the county assessor using the following criteria:

(a) The sales comparison approach using similar rent restricted properties, the cost approach, and the income approach, shall be considered in valuing section 42 low-income properties. The cost approach shall include an economic obsolescence factor associated with the income and rent restrictions provided with each development's tax credit regulatory agreement with the Idaho housing and finance association. The three (3) approaches will be reconciled into a single property value.

(b) Net operating income to be capitalized in the income approach shall

not include the amount of housing tax credits. However, the amount of such credits shall be added to the capitalized net operating income using one (1) of the following procedures:

- (i) Except as provided in subsection (2)(b)(ii) of this section, for properties for which housing tax credits have been received prior to January 1, 2009, and for properties subject to new regulatory agreements on or after January 1, 2009, the total dollar amount of such credits shall be divided by the total number of years in the regulatory agreement;
- (ii) For properties for which housing tax credits originally were received, but which are no longer receiving such credits as of January 1, 2009, no amount shall be added; or
- (iii) For properties previously receiving housing tax credits, but subject to a new regulatory agreement on or after January 1, 2009, the total amount of housing tax credits pursuant to the new agreement shall be divided by the number of years in the new regulatory agreement. This amount shall supersede and be substituted for any amount previously calculated.

Net operating income shall be capitalized into value using a market derived capitalization rate. To determine the net operating income, effective gross income shall be reduced by costs customary to section 42 operations, including normalized operating expenses plus all compliance, audit, asset management and other fees, but not general partner fees, as well as those costs set forth in each development's tax credit regulatory agreement with the Idaho housing and finance association.

(c) The Idaho state tax commission shall gather market data to determine market derived capitalization rates for section 42 low-income properties from section 42 property sales. Determination of the market derived capitalization rates for section 42 low-income property sales shall include both actual net operating income and calculated tax credit income consistent with the formula in subsection (2)(b) of this section. The Idaho state tax commission shall then make the information available to each county assessor. If fewer than three (3) comparable sales of section 42 low-income properties are available, then a capitalization rate derived from properties with no federal project based assistance shall be used. As used in this section, "comparable" shall mean section 42 low-income properties with no federal project based assistance. A sale of a section 42 low-income property shall not be considered as a comparable sale if the buyer of that property receives a new allocation of section 42 tax credits from the Idaho housing and finance association.

(d) Beginning in 2010, the owners of properties described in this section shall provide to the Idaho state tax commission no later than April 1 of each year, such financial statements from the prior year as are customarily prepared in the ownership and operation of any section 42 property. For 2009, said financial statements shall be provided no later than May 1. In addition, no later than May 1 of 2009 or, for new developments with housing tax credits or new allocations, by April 1 of the first year of any tax credit regulatory agreement, the Idaho housing and finance association shall provide to the Idaho state tax commission statements ascer-

taining the dollar amounts of housing tax credits that have been allocated to each section 42 property, the year such credits were first paid, and the total number of years in the regulatory agreement. The Idaho state tax commission shall then make the financial statements and tax credit information required under this section available to each county assessor. If such information is not made available to the Idaho state tax commission and county assessors, each county shall substitute market rent apartment derived expenses and income for section 42 low-income properties.

(e) The Idaho state tax commission shall have the authority to promulgate rules dealing with the enactment and enforcement of this section.

(f) If the use of the income approach as described in subsection (2)(b) of this section results in an assessed value lower than would be obtained if the income approach in subsection (2)(b) of this section were not used, the difference will be exempt.

History.

I.C., § 63-205A, as added by 2009, ch. 140, § 2, p. 422; am. 2013, ch. 7, § 1, p. 15.

STATUTORY NOTES

Cross References.

Idaho housing and finance association, § 67-6201 et seq.

Amendments.

The 2013 amendment, by ch. 7, substituted "To determine the net operating income, effective gross income" for "The net operating income" at the beginning of the second sentence in the last paragraph of paragraph (2)(b).

Legislative Intent.

Section 1 of S.L. 2009, ch. 140 provided: "Legislative Intent. It is the intent of the Legislature to establish a uniform valuation method for Section 42 low-income properties throughout Idaho. In doing so, the following are to be considered:

"(1) To insure equitable treatment for all property owners, without creating any added favor or penalty for Section 42 low-income property owners;

"(2) To recognize recent court decisions that

both tax credits and actual restricted rents must be valued under current law;

"(3) To provide fair valuations using consistent and predictable appraisal methods in valuing Section 42 low-income properties throughout the economic life of the property;

"(4) To employ the use of recognized appraisal techniques;

"(5) To give consideration to all three approaches to values; and

"(6) To provide that the assessed valuation of Section 42 low-income property not exceed the assessed value of comparable rental housing of the same quality, condition and location not receiving Section 42 low-income tax credits."

Federal References.

Section 42 of the Internal Revenue Code, referred to in subsection (1), is codified as 26 U.S.C.S. § 42.

Effective Dates.

Section 3 of S.L. 2009, ch. 140 declared an emergency retroactively to January 1, 2009. Approved April 8, 2009.

63-205B. Assessment of operating property of rate regulated electric utility companies. — (1) In the assessment of the operating property of rate regulated electric utility companies, the market value shall be determined by the state tax commission by applying applicable law, statutes, property tax administrative rules and the following criteria:

(a) Depending on the weighting placed on the income approach, as described in subsection (1)(d) of this section, no more than twenty percent (20%) weight shall be placed on the cost indicator when utilizing the

historic cost less depreciation (HCLD) method in the system value correlation.

(b) In the income approach, income to be capitalized will be normalized, utilizing the gross domestic product implicit price deflator from the United States department of commerce, bureau of economic analysis, by using an average of at least the previous four (4) years' net operating incomes and by adjusting each year's net operating income for unusual nonrecurring items.

(c) In the income approach, a market discount rate will be determined and will include a flotation cost component supported by nationally recognized sources.

(d) A weighting between eighty percent (80%) and one hundred percent (100%) will be placed on the income approach in the system value correlation.

(e) Within the market approach, a sales comparison approach may be used if reliable data is available and appropriate comparison adjustments can be made. No weight will be placed on a stock and debt approach in the system value correlation.

(f) For rate regulated electric utility companies, the weightings prescribed in this section shall control the weightings used in the system correlation or reconciliation.

(2) Subsection (1)(a) of this section shall be construed to mean that the use of no more than twenty percent (20%) weight placed on the cost indicator, when utilizing the HCLD method to calculate the cost approach, accounts for any and all forms of depreciation, including any and all forms of obsolescence and the appraiser shall not consider any further obsolescence.

(3) The state tax commission is hereby authorized to promulgate rules to implement the provisions of this section.

History.

I.C., § 63-205B, as added by 2014, ch. 76,
§ 1, p. 201.

STATUTORY NOTES

Cross References.

State tax commission, § 63-101 et seq.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

Compiler's Notes.

For further information on the bureau of economic analysis, see <http://www.bea.gov/index.htm>.

Effective Dates.

Section 2 of S.L. 2014, ch. 357 declared an emergency and made this section retroactive to January 1, 2014.

63-208. Rules pertaining to market value — Duty of assessors.

JUDICIAL DECISIONS

Validity of Assessment.

Landowners did not prove their own property appraisal, or any of their own comparables, to substantiate their claim that

their property was overvalued, to suggest that the assessor did not locate enough comparables, or to show that the ones chosen were inappropriate. *Kimbrough v. Idaho Bd.*

of Tax Appeals & Canyon County Bd. of Equalization (In re Kimbrough), 150 Idaho 417, 247 P.3d 644 (2011).

Sales comparison approach to determining the market value of a vacant lakefront parcel

was proper, even though the assessor did not go back in time as far as the taxpayer wanted, or use only parcels on the same lake. Wurzburg v. Kootenai County, — Idaho —, 308 P.3d 936 (Ct. App. 2013).

63-215. Legal description and map of boundaries to be recorded and filed. — (1) Any taxing district which shall be formed or organized hereafter, or which shall change any existing boundaries hereafter, shall cause one (1) copy of the legal description and map prepared in a draftsmanlike manner which shall plainly and clearly designate the boundaries of such district or municipality as formed or organized, or as altered, to be recorded with the county recorder and filed with the county assessor in the counties within which the unit is located and with the state tax commission within thirty (30) days following the effective date of such formation, organization or alteration but no later than the tenth day of January of the year following such formation, organization or alteration. In the case of fire protection districts, the board of county commissioners approving the boundaries shall be responsible for delivering to the assessor and recorder the map and legal description of the amended district boundaries. Formation, organization or alteration documents that are filed pursuant to this section shall include contact information that is current at the time of filing and that identifies an individual associated with the taxing district.

(2) Urban renewal agencies shall comply with the requirements of subsection (1) of this section when a revenue allocation area within the jurisdiction of the urban renewal agency is formed or when the boundaries of such an area are altered.

(3) The state tax commission shall review filings required by subsections (1) and (2) of this section and if the commission finds that the formation of a district or a change in a district's boundaries fails to provide a proper legal description or fails to correctly identify the boundaries or does not comply with Idaho law relating to boundaries, the state tax commission may direct that the formation or change not be recognized. The state tax commission's review shall not include matters relating to notice, open meeting law requirements or compliance with provisions in Idaho law not relating to boundaries.

(4) The county assessor, county auditor and state tax commission shall retain on file in their respective offices all copies of legal descriptions of taxing district boundaries and maps filed by the various taxing jurisdictions authorized to impose a levy on property.

(5) The state tax commission shall be responsible for providing copies of uniform tax code area numbers and maps to the county assessor, county auditor and county treasurer and various companies having operating property subject to assessment in the state of Idaho and under the jurisdiction of the state tax commission for assessment and taxation purposes.

(6) Unless otherwise specifically authorized to form with noncontiguous boundaries, or to annex or de-annex properties so as to make noncontiguous

boundaries, all taxing districts shall form with and maintain contiguous boundaries.

History.

I.C., § 63-215, as added by 1996, ch. 98, § 3, p. 308; am. 1997, ch. 117, § 12, p. 298;

am. 2000, ch. 114, § 2, p. 252; am. 2008, ch. 7, § 1, p. 8; am. 2013, ch. 21, § 1, p. 36.

STATUTORY NOTES

Cross References.

State tax commission, Idaho Const., Art. VII, § 12 and § 63-101.

section (3) and redesignated the subsequent subsections accordingly.

The 2013 amendment, by ch. 21, added the last sentence in subsection (1).

Amendments.

The 2008 amendment, by ch. 7, added sub-

63-217. Filing of material by mail or private delivery services. —

(1) Any report, claim, return, statement or other document or payment dealing in any way or in any manner whatsoever with taxation which is required or authorized to be filed or made to the state of Idaho, or to any political subdivision thereof, which is:

(a) Transmitted through the United States mail, shall be deemed filed or made and received by the state or political subdivision on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. For purposes of this title, a postage meter cancellation shall not be deemed a post office cancellation mark.

(b) Mailed but not received by the state or political subdivision or where received and the cancellation mark is illegible, erroneous or omitted, shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement or other document or payment was deposited in the United States mail on or before the date for filing or paying; and in cases of such nonreceipt of any such report, claim, tax return, statement or other document or payment required by law to be filed or made, the sender files with the state or political subdivision a duplicate within fifteen (15) days after written notification is given to the sender by the state or political subdivision of its nonreceipt of such report, claim, tax return, statement, or other document or payment.

(2) If any such report, claim, tax return, statement or other document or payment is sent by United States mail and either registered or certified, a record authenticated by the United States post office of such registration or certification shall be considered competent evidence that the report, claim, tax return, statement or other document or payment was delivered to the state officer or state agency or officer or agency of the political subdivision to which addressed, and the date of registration or certification shall be deemed the postmarked date.

(3) Any reference in this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the United States department of treasury under section 7502 of the Internal Revenue Code. Any reference in this section to a postmark by the United States postal service shall be treated as including a reference to any

date recorded or marked as described in section 7502 of the Internal Revenue Code by any designated delivery service.

(4) If the date for filing any such report, claim, tax return, statement or other document or making any such payment falls upon a Saturday, a Sunday, a legal holiday or, in matters arising under chapter 30, title 63, Idaho Code, a holiday recognized by the internal revenue service, such acts shall be considered timely if performed on the next business day.

History.

I.C., § 63-217, as added by 1996, ch. 98, § 3, p. 308; am. 2004, ch. 28, § 1, p. 45; am. 2012, ch. 227, § 1, p. 628.

STATUTORY NOTES

Amendments.

The 2012 amendment by ch. 227, inserted “in matters arising under chapter 30, title 63, Idaho Code, a holiday recognized by the internal revenue service” in subsection (4).

referred to in subsection (3), appears as 26 U.S.C.S. § 7502.

Effective Dates.

Section 2 of S.L. 2012, ch. 227 declared an emergency. Approved April 3, 2012.

Federal References.

Section 7502 of the Internal Revenue Code,

63-218. Reproduction of records — Destruction of originals authorized — Admissibility in evidence. — (1) The state tax commission or any political subdivision of the state of Idaho may retain any document in a different form or medium from that in which it is received, provided that the form or medium in which the document is retained results in a permanent record which may be accurately reproduced during the period for which the document must be retained under any tax law administered or enforced by the state tax commission. The original document, once reproduced, may be disposed of or destroyed.

(2) A document retained in any form or medium permitted under this section shall be deemed to be an original public record for all purposes. A reproduction or copy of such a document, certified by a state officer, shall be deemed to be a transcript or certified copy of the original, and shall be admissible in any court or administrative hearing.

History.

I.C., § 63-218, as added by 1996, ch. 98, § 3, p. 308; am. 2008, ch. 5, § 1, p. 6.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 5, deleted “prevalence over previous law” from the end of the section catchline and rewrote the section

to allow the retention of tax documents in a form or medium different from that in which they were received under certain conditions.

CHAPTER 3

ASSESSMENT OF REAL AND PERSONAL PROPERTY

SECTION.

63-301A. New construction roll.

63-308. Valuation assessment notice to be furnished taxpayer.

63-309. Improvements on exempt and railroad rights-of-way lands — Equity in state property.

63-313. Special provisions for transient personal property.

SECTION.

63-316. Adjustment of assessed value — Completion of assessment program by state tax commission — Payment of costs.

63-317. Occupancy tax — Procedures.

63-301A. New construction roll. — (1) The county assessor shall prepare a new construction roll, which shall be in addition to the property roll, which new construction roll shall show:

- (a) The name of the taxpayer;
- (b) The description of the new construction, suitably detailed to meet the requirements of the individual county;
- (c) A description of the land and its change in use, suitably detailed to meet the needs of the individual county;
- (d) The amount of taxable market value added to the property on the current year's property roll that is directly the result of new construction or a change in use of the land or both;
- (e) The amount of taxable market value added as provided in subsection (3)(g) of this section as a result of dissolution of any revenue allocation area;
- (f) The amount of taxable market value to be deducted to reflect the adjustments required in paragraphs (f)(i), (f)(ii), (f)(iii) and (f)(iv) of this subsection:
 - (i) Any board of tax appeals or court ordered value change, if property has a taxable value lower than that shown on any new construction roll in any one (1) of the immediate five (5) tax years preceding the current tax year;
 - (ii) Any reduction in value resulting from correction of value improperly included on any previous new construction roll as a result of double or otherwise erroneous assessment;
 - (iii) Any reduction in value, in any one (1) of the immediate five (5) tax years preceding the current tax year, resulting from a change of land use classification;
 - (iv) Any reduction in value resulting from the exemption provided in section 63-602W(4), Idaho Code, in any one (1) of the immediate five (5) tax years preceding the current tax year.

(2) As soon as possible, but in any event by no later than the first Monday in June, the new construction roll shall be certified to the county auditor and a listing showing the amount of value on the new construction roll in each taxing district or unit be forwarded to the state tax commission on or before the fourth Monday in July. Provided however, the value shown in subsection (3)(f) of this section shall be reported to the appropriate county auditor by the state tax commission by the third Monday in July and the value sent by

the county auditor to each taxing district. The value established pursuant to subsection (3)(f) of this section is subject to correction by the state tax commission until the first Monday in September and any such corrections shall be sent to the appropriate county auditor, who shall notify any affected taxing districts.

(3) The value shown on the new construction roll shall include the taxable market value increase from:

- (a) Construction of any new structure that previously did not exist; or
- (b) Additions or alterations to existing nonresidential structures; or
- (c) Installation of new or used manufactured housing that did not previously exist within the county; or
- (d) Change of land use classification; or
- (e) Property newly taxable as a result of loss of the exemption provided by section 63-602W(3) or (4), Idaho Code; or
- (f) The construction of any improvement or installation of any equipment used for or in conjunction with the generation of electricity and the addition of any improvement or equipment intended to be so used, except property that has a value allocated or apportioned pursuant to section 63-405, Idaho Code, or that is owned by a cooperative or municipality, as those terms are defined in section 61-332A, Idaho Code, or that is owned by a public utility, as that term is defined in section 61-332A, Idaho Code, owning any other property that is allocated or apportioned. No replacement equipment or improvements may be included; or
- (g) Increases in value over the base value of property on the base assessment roll within an urban renewal revenue allocation area that has been terminated pursuant to section 50-2909(4), Idaho Code, to the extent that this increment exceeds the incremental value as of December 31, 2006, or, for revenue allocation areas formed after December 31, 2006, the entire increment value. Notwithstanding other provisions of this section, the new construction roll shall not include new construction located within an urban renewal district's revenue allocation area, except as provided in this subsection (3)(g); or
- (h) New construction, in any one (1) of the immediate five (5) tax years preceding the current tax year, allowable but never included on a new construction roll, provided however, that, for such property, the value on the new construction roll shall reflect the taxable value that would have been included on the new construction roll for the first year in which the property should have been included.
- (i) Formerly exempt improvements on state college or state university owned land for student dining, housing, or other education related purposes approved by the state board of education and board of regents of the university of Idaho as proper for the operation of such state college or university provided however, such improvements were never included on any previous new construction roll.

(4) The amount of taxable market value of new construction shall be the change in net taxable market value that is attributable directly to new construction or a change in use of the land or loss of the exemption provided by section 63-602W(3) or (4), Idaho Code. It shall not include any change in

value of existing property that is due to external market forces such as general or localized inflation, except as provided in subsection (3)(g) of this section.

History.

I.C., § 63-301A, as added by 1997, ch. 117, § 13, p. 298; am. 1998, ch. 95, § 2, p. 341; am. 2002, ch. 143, § 6, p. 394; am. 2002, ch. 344, § 1, p. 962; am. 2003, ch. 8, § 1, p. 14; am.

2003, ch. 16, § 15, p. 48; am. 2007, ch. 135, § 1, p. 395; am. 2010, ch. 254, § 1, p. 644; am. 2010, ch. 283, § 1, p. 760; am. 2011, ch. 151, § 28, p. 414; am. 2011, ch. 175, § 1, p. 496; am. 2012, ch. 192, § 2, p. 517.

STATUTORY NOTES

Amendments.

This section was amended by two 2010 acts which appear to be compatible and have been compiled together.

The 2010 amendment, by ch. 254, added paragraph (3)(i)(h).

The 2010 amendment, by ch. 283, added paragraph (1)(f); in the introductory language in subsection (3), substituted “shall include” for “may include”; and added paragraph (3)(h).

This section was amended by two 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 151, redesignated the last paragraph in subsection (3) as paragraph (3)(i).

The 2011 amendment, by ch. 175, in paragraph (1)(f)(i), deleted “previous” preceding “new construction roll” and added “in any one (1) of the immediate five (5) tax years preceding the current tax year”; in paragraph (1)(f)(ii), inserted “in any one (1) of the immediate five (5) tax years preceding the current

tax year”; and in paragraph (3)(h), deleted “previously” following “New construction” and inserted “in any one (1) of the immediate five (5) tax years preceding the current tax year.”

The 2012 amendment, by ch. 192, inserted “(f)(iv)” in the introductory paragraph in subsection (1)(f); added paragraph (1)(f)(iv); inserted “(3) or (4)” in paragraph (3)(e); and inserted “or (4)” in the first sentence in subsection (4).

Compiler's Notes.

S.L. 2012, Chapter 192 became law without the signature of the governor.

Effective Dates.

Section 3 of S.L. 2010, ch. 254 declared an emergency retroactively to January 1, 2010 and approved April 8, 2010.

Section 4 of S.L. 2010, ch. 283 declared an emergency retroactively to January 1, 2010 and approved April 8, 2010.

Section 3 of S.L. 2012, ch. 192 declared an emergency and made this section retroactive to January 1, 2012.

63-308. Valuation assessment notice to be furnished taxpayer. —

(1) At the taxpayer's request, on a form provided by the assessor, the valuation assessment notice may be transmitted electronically to the taxpayer.

(2) The valuation assessment notice required under the provisions of this chapter shall be delivered or may be transmitted electronically, as that term is defined in section 63-115, Idaho Code, if electronic transmission is requested by the taxpayer, to the taxpayer, or to his agent or representative, or mailed to the taxpayer, or to his agent or representative at his last known post office address no later than the first Monday in June. The original valuation assessment notice so mailed or transmitted electronically must contain notices of all meetings of the board of equalization prescribed by this title for the purposes of equalizing assessments of property, and for granting exemptions from taxation. The notice shall, in clear terms, inform the taxpayer of the assessed market value for assessment purposes of his property for the current year, and his right to appeal to the county board of equalization. The state tax commission may require that other data or information be shown on the form.

(3) In case any changes or corrections are made by the assessor from the

original valuation assessment notice, the assessor shall immediately transmit electronically or mail a corrected valuation assessment notice to the taxpayer, or his agent or representative.

(4) If the taxpayer is one other than the equitable titleholder, such as an escrowee, trustee of trust deed or other third party, the taxpayer shall transmit electronically or mail to the equitable titleholder a true copy of the valuation assessment notice on or before the second Monday in June.

(5) For property entered and assessed on the subsequent property roll pursuant to section 63-311, Idaho Code, the valuation assessment notice shall be transmitted electronically to the taxpayer, his agent or representative, or mailed to the taxpayer, or to his agent or representative at his last known post office address as soon as possible after it is prepared, but not later than the fourth Monday in November.

(6) For property entered and assessed on the missed property roll pursuant to section 63-311, Idaho Code, the valuation assessment notice shall be transmitted electronically to the taxpayer, his agent or representative, or mailed to the taxpayer, or to his agent or representative at his last known post office address as soon as possible after it is prepared, but not later than the first Monday of January of the following year.

History.

I.C., § 63-308, as added by 1996, ch. 98, § 4, p. 308; am. 2013, ch. 191, § 1, p. 472.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 191, substituted “transmitted electronically” for “delivered” in subsections (2), (5), and (6); inserted present subsection (1) and redesignated former subsections (1) through (5) as subsections (2) through (6); inserted “or may be transmit-

ted electronically, as that term is defined in section 63-115, Idaho Code, if electronic transmission is requested by the taxpayer” in the first sentence of subsection (2); and substituted “transmit electronically or mail” for “deliver” in subsections (3) and (4).

63-309. Improvements on exempt and railroad rights-of-way lands — Equity in state property. — (1) All taxable improvements on government, Indian, state, county, municipal or other lands exempt from taxation, and all improvements on all railroad rights-of-way owned separately from the ownership of the rights-of-way upon which the same stands, or in which nonexempt persons have possessory interests, shall be assessed and taxed as personal property, provided that such improvements shall not be eligible for the exemption provided in section 63-602KK, Idaho Code.

(2) Property of the state of Idaho or any department, agency or subdivision thereof, or any other property not subject to property taxation to the owner thereof by reason of the legal status of the owner, held under contract of sale or lease with option to purchase, with lease moneys applicable to the purchase price, by any person, corporation or other association for his or its exclusive use, shall be subject to the purchaser or lessee for property taxation. When such property is held under a contract of sale or other agreement whereby on certain payment or payments the legal title is or may be acquired by such person, firm, corporation or association, such property

shall be assessed to such person, firm, corporation or association and taxed without deduction on account of the whole or any part of the purchase price or other sum due on such property remaining unpaid. The lien for any such property tax shall neither attach to, impair or be enforced against any interest of the state of Idaho or any department, agency or subdivision thereof.

(3) Refusal to pay the property tax levied upon any equity in state property by the owner upon demand by the tax collector shall operate as forfeiture of such equity.

History.

I.C., § 63-309, as added by 1996, ch. 98,
§ 4, p. 308; am. 2014, ch. 357, § 3, p. 886.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 357, added “provided that such improvements shall not be eligible for the exemption provided in section 63-602KK, Idaho Code” at the end of subsection (1).

Effective Dates.

Section 8 of S.L. 2014, ch. 357 declared an emergency and made this section retroactive to January 1, 2014.

Compiler's Notes.

S.L. 2014, Chapter 357 became law without the signature of the governor.

63-313. Special provisions for transient personal property. —

(1) All transient personal property shall be listed by the owner and shall show the quantity, name, model, serial number, if any, year of manufacture, date of purchase, cost, whether new or used and other identifying information required by the county assessor. The list of transient personal property shall identify the owner of the property and shall be filed with the home county assessor on or before the first day of November of each year. The owner of transient personal property may elect to treat as his home county that county in which he maintains his residence or usual place of business or in which the transient personal property is usually kept. The report shall be made on forms prescribed by the state tax commission and shall identify periods of thirty (30) days or more during which the personal property is located in a county, specifying the location of the transient personal property for each month of the current calendar year with a projection of the location for the remaining months of November and December.

(2) The county assessor of the home county or the receiving county of the listing shall file within ten (10) days with the county assessor of all counties identified on the report a copy of the report. Each county so identified shall then place a prorated assessment on such personal property on the subsequent or missed property roll only for the length of time that the personal property was located in their county.

(3) In the event that any transient personal property has been or will be taxed for the current year in another state, the property shall be taxed for only that portion of the year that the transient personal property is kept and does remain in the state of Idaho.

(4) The provisions of this section shall not apply to transient personal property in transit through this state, or to transient personal property sold by the owner thereof in the home county upon which the taxes for the full year have been paid or secured, which said transient personal property is kept, moved, transported, shipped or hauled into and remaining in another county, and there kept or remaining either for the purpose of use or sale within the current year.

(5) For transient personal property valued at over one hundred thousand dollars (\$100,000), any exemption in section 63-602KK, Idaho Code, available to the taxpayer shall be allocated among counties based on the prorated value provided in subsection (2) of this section.

History.

I.C., § 63-313, as added by 1996, ch. 98,
§ 4, p. 308; am. 2008, ch. 400, § 7, p. 1101.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 400, added
subsection (5).

that the act should take effect on and after
January 1, 2009.

Effective Dates.

Section 10 of S.L. 2008, ch. 400 provided

63-314. County valuation program to be carried on by assessor.

JUDICIAL DECISIONS

Cited in: Wurzburg v. Kootenai County, —
Idaho —, 308 P.3d 936 (Ct. App. 2013).

63-316. Adjustment of assessed value — Completion of assessment program by state tax commission — Payment of costs. —

(1) Whenever the state tax commission, after a hearing, determines that any county assessor or the county commissioners in assessing property in the county subject to taxation have failed to abide by, adhere to and conform with the laws of the state of Idaho and the rules of the state tax commission in determining market value for assessment purposes, the state tax commission shall order the county assessor and county commissioners of such county to make the necessary changes or corrections in such assessments and if the county assessor and the county commissioners refuse or neglect to comply with such order, the state tax commission is authorized to and shall forthwith adjust or change the property roll in such county.

(2) In lieu of the hearings and actions permitted in subsection (1) of this section, the state tax commission shall monitor each county's implementation of the continuing appraisal required in section 63-314, Idaho Code, and may require each county to file such reports of its progress at implementation of such continuing appraisals as the commission may find necessary. In the event that the commission finds that any county is failing to meet the requirements of section 63-314, Idaho Code, the commission may order that county's indexing or appraisal or reappraisal programs be conducted under

the exclusive and complete control of the state tax commission and the results of such programs shall be binding upon the county officers of the county for which ordered. Payments for the actual cost of such programs shall be made from the sales tax distribution created in section 63-3638, Idaho Code, and the amount of such payments shall be withheld from the payments otherwise made under the provisions of section 63-3638(10)(c) and (10)(d), Idaho Code, to the county for which indexing, appraisal or reappraisal has been ordered, and this subsection shall constitute the necessary appropriation to accomplish such payments, any other provision of law notwithstanding.

History.

I.C., § 63-316, as added by 1996, ch. 98, § 4, p. 308; am. 2000, ch. 207, § 1, p. 527; am.

2001, ch. 130, § 2, p. 451; am. 2009, ch. 341, § 141, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, updated the section reference in the last sentence in subsection (2).

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

63-317. Occupancy tax — Procedures. — (1) All real property subject to property taxation shall be valued and taxed based upon its status as of January 1 of each tax year. Improvements, other than additions to existing improvements, constructed upon real property shall not be subject to property taxation during the year of construction other than that portion actually in place as of January 1 of each calendar year; new manufactured housing shall not be subject to property taxation during the first year of occupancy if occupied after January 1. For the purposes of this section, “new manufactured housing” means manufactured housing, whether real or personal, never previously occupied.

(2) There is hereby levied an occupancy tax upon all newly constructed and occupied residential, commercial and industrial structures, including new manufactured housing, except additions to existing improvements or manufactured housing, prorated for the portion of the year for which the structure was occupied. The occupancy tax shall be upon those improvements or new manufactured housing for that portion of the calendar year in which first occupancy occurs. The occupancy tax does not apply to operating property. Improvements that were exempt as of January 1 of the tax year, but that may be subject to occupancy tax during that tax year, shall not be subject to property tax as otherwise provided in section 63-602Y, Idaho Code. For the purposes of this section, the term “occupied” means:

- (a) Use of the property by any person as a residence including occupancy of improvements or use in storage of vehicles, boats or household goods, provided such use is not solely related to construction or sale of the property; or
- (b) Use of the property for any business or commercial purpose unrelated to the construction and sale of the property; or
- (c) Any possessory use of the property for which the owner received any compensation or consideration.

(3) The owner of any newly constructed improvement or new manufactured housing, as described in this section, upon which no occupancy tax has been charged shall report to the county assessor that the improvement or new manufactured housing has been occupied. As soon as practical after receiving such a report, the county assessor shall appraise and determine the market value for assessment purposes.

(a) At the time the county assessor determines the market value for assessment purposes of any improvement, he shall allow as an offset against the market value of the improvement the market value of any portion of that improvement which was existing on January 1 and placed upon the property roll.

(b) Upon completion of the appraisal and entry of the appraised value on the occupancy tax roll, which roll shall be prepared for property subject to the occupancy tax, the county assessor shall notify the owner of the appraised value and their right to appeal the value provided in the appraisal within twenty-eight (28) days of such notification in the manner provided in section 63-501A, Idaho Code, notwithstanding date limitations found in that section, and further shall notify the owner of their right to apply for the exemption provided in sections 63-602G and 63-602X, Idaho Code. If the owner applies for and meets the requirements for such exemption within thirty (30) days of the notification by the county assessor, the exemption shall be extended to the newly constructed and occupied residential structures in compliance with section 63-602G, Idaho Code, notwithstanding limitations requiring occupancy as of April 15 of the tax year.

(c) In the event that the owner fails to report to the county assessor that the property is ready for occupancy, the assessor shall notify the county board of equalization, who may impose as penalty an additional amount equal to five percent (5%) of the tax for each month following the date of first occupancy during which the report is not made, to a maximum of twenty-five percent (25%) of the tax.

(4) Appeals of the market value for assessment purposes shall be resolved in the same manner as all other appeals of valuation by the board of equalization.

(5) The occupancy tax calculated upon the values set by the county assessor, and any penalty imposed by the board of equalization shall be collected in the same manner as all other property taxes.

(6) An occupancy tax lien shall be imposed in the manner provided in section 63-206, Idaho Code.

(7) Occupancy taxes shall be billed, collected and distributed in the same manner as all other property taxes.

History.

I.C., § 63-317, as added by 1996, ch. 98, § 4, p. 308; am. 1997, ch. 117, § 15, p. 298; am. 2003, ch. 364, § 1, p. 972; am. 2004, ch.

260, § 1, p. 735; am. 2006, ch. 302, § 1, p. 931; am. 2013, ch. 21, § 2, p. 36; am. 2014, ch. 77, § 2, p. 202.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 21, substituted "April 15" for "January 1" near the end of paragraph (3)(b).

The 2014 amendment, by ch. 77, inserted the fourth sentence in the introductory language of subsection (2) and rewrote the first sentence in paragraph (3)(b), which formerly read: "Upon completion of the appraisal, the county assessor shall notify the owner of the

appraisal, and further shall notify the owner of their right to apply for the exemption provided in sections 63-602G and 63-602X, Idaho Code".

Effective Dates.

Section 4 of S.L. 2014, ch. 77 declared an emergency and made this section retroactive to January 1, 2013.

RESEARCH REFERENCES

A.L.R. — Obligation of online travel companies to collect and remit hotel occupancy taxes. 61 A.L.R.6th 387.

CHAPTER 4 APPRAISAL, ASSESSMENT AND TAXATION OF OPERATING PROPERTY

63-409. Appeals from state tax commission valuations of operating property.

JUDICIAL DECISIONS

ANALYSIS

Appealing assessments.
— Substantial evidence review.

Appealing Assessments.

— Substantial Evidence Review.

District court did not err in finding that the corporation proved by a preponderance of the evidence that the Idaho State Tax Commis-

sion's valuation of its taxable operating property in Idaho was erroneous; the district court did not err in finding that the corporation's expert's appraisal was reliable. *Pacificorp v. Idaho State Tax Comm'n*, 153 Idaho 759, 291 P.3d 442 (2012).

CHAPTER 5 EQUALIZATION OF ASSESSMENTS

SECTION.

63-501. Meeting of commissioners as a board of equalization.
63-501A. Taxpayer's right to appeal.
63-509. Delivery of rolls to county auditor — Abstracts of rolls.

SECTION.

63-510. Notification of valuation due to state tax commission.
63-511. Appeals from county board of equalization.

63-501. Meeting of commissioners as a board of equalization. —

(1) The county commissioners of each county shall convene as a board of equalization at least once in every month of the year up to the fourth Monday of June for the purpose of equalizing the assessments of property on the property roll and shall meet on the aforesaid date in each year:

- (a) To complete the equalization of assessments on all property which has not yet been equalized; and
- (b) To hear appeals of assessment or exemption of property which are received on or before the end of each county's normal business hours on the fourth Monday of June.

Upon meeting to complete the equalization of assessments, the board of equalization shall continue in session from day to day until equalization of the assessments of such property has been completed and shall also hear and determine complaints upon allowing or disallowing exemptions under chapter 6, title 63, Idaho Code. The board of equalization must complete such business and adjourn as a board of equalization on the second Monday of July, provided that the board of equalization may adjourn any time prior to the aforesaid date when they have completed all of the business as a board of equalization.

The county assessor or his designee shall attend all meetings of the county commissioners in session as a board of equalization and he may make any statements or introduce testimony and examine witnesses on questions before the board of equalization relating to the assessments.

(2) The county commissioners of each county in this state shall meet as a board of equalization on the fourth Monday of November in each year for the purpose of:

- (a) Equalizing the assessments of all property entered upon the subsequent property roll;
- (b) Determining complaints and hearing appeals in regard to the assessment of such property;
- (c) Allowing or disallowing exemptions and cancellations claimed under the provisions of this title affecting the assessment or taxation of property entered upon the rolls, and having a settlement with the assessor and tax collector.

The board of equalization shall complete its business and adjourn on or before the first Monday of December in each year, but if other personal or real property is discovered and assessed after the subsequent board of equalization has adjourned, and is entered on the missed property roll, the taxpayer may appeal that assessment to the county commissioners meeting as a board of equalization, for the purposes stated in subsection (2)(a), (b) and (c) of this section, during its monthly meeting in January of the following year, provided however, that said meeting must be no sooner than the first Monday in January.

History.

I.C., § 63-501, as added by 1996, ch. 98,
§ 6, p. 308; am. 2012, ch. 4, § 1, p. 6.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 4, in subsection (1), deleted former paragraph (b), which read, "To grant, allow or deny applications for

exemption from property tax valuation," redesignated former paragraph (c) as present paragraph (b), and inserted "or exemption" in paragraph (b).

63-501A. Taxpayer's right to appeal. — (1) Taxpayers may file an appeal of an assessment or exemption decision with the county board of equalization. An appeal shall be made in writing on a form provided by the county board of equalization or assessor and must identify the taxpayer, the property which is the subject of the appeal and the reason for the appeal. An appeal of an assessment listed on the property roll must be filed on or before the end of the county's normal business hours on the fourth Monday of June. An appeal of an assessment listed on the subsequent property roll must be filed on or before the end of the county's normal business hours on the fourth Monday of November. An appeal of an assessment listed on the missed property roll must be filed on or before the board of equalization adjourns on the day of its January meeting. The board of equalization may consider an appeal only if it is timely filed.

(2) Appeals from the county board of equalization shall be made pursuant to section 63-511, Idaho Code.

History.

I.C., § 63-501A, as added by 1996, ch. 98,

§ 6, p. 308; am. 1997, ch. 117, § 18, p. 298;
am. 2012, ch. 4, § 2, p. 6.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 4, inserted "or

exemption decision" in the first sentence of subsection (1).

63-509. Delivery of rolls to county auditor — Abstracts of rolls. —

(1) On or before the second Monday of July the board of equalization must deliver the property rolls, with all changes, corrections and additions and exemptions from taxation entered therein, to the county auditor. It shall be the duty of the county auditor to cause to be prepared the roll for delivery to the county tax collector on or before the first Monday of November. It shall be the duty of the county auditor to cause to be prepared a total of the amount and value of each category of property and prepare an abstract of all the property entered upon the roll in the manner and form required by the state tax commission. Such forms must show, but need not be limited to, the market value for assessment purposes of all property by categories, and the exemptions from taxation allowed by categories. Any abstracts needed by and prepared for the state tax commission must be delivered by certified mail to the state tax commission by the fourth Monday of July. The abstracts will show the increment value as defined in section 50-2903, Idaho Code, in any revenue allocation area established pursuant to chapters 20 and 29, title 50, Idaho Code, and the value of exemptions granted pursuant to sections 63-602G, 63-602K, 63-602P, 63-602X, 63-602AA, 63-602BB and 63-602CC, Idaho Code, as well as the net taxable value for each of the categories. The abstracts shall be prepared and duly verified and must show a correct classification of all the property in accordance with the classification of such property upon the property roll, and all matters and things required to be shown upon the abstracts must be entered.

(2) The subsequent property roll shall be delivered to the county auditor as soon as possible after the first Monday in December. The county auditor

shall deliver the subsequent property roll to the county tax collector without delay.

(3) The missed property roll shall be delivered to the county auditor as soon as possible, but no later than the first Monday in March of the succeeding year. The county auditor shall deliver the missed property roll to the county tax collector without delay.

(4) The county auditor must cause to be prepared abstracts of the combined subsequent and missed property rolls as prescribed in subsection (1) and submit the abstracts by certified mail to the state tax commission on or before the first Monday in March of the succeeding year.

History.

I.C., § 63-509, as added by 1996, ch. 98, § 6, p. 308; am. 1997, ch. 117, § 19, p. 298; am. 2013, ch. 21, § 3, p. 36.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 21, rewrote the sixth sentence in subsection (1), which formerly read: "The value of exemptions will be shown and identified for exemptions granted pursuant to chapters 20 and 29, title 50, Idaho Code, for the value in excess of the

equalized assessment valuation as shown on the base assessment roll in any revenue allocation area, and sections 63-602G, 63-602K, 63-602P, 63-602AA, 63-602X, 63-602BB and 63-602CC, Idaho Code, as well as the net taxable value for each of the categories."

63-510. Notification of valuation due to state tax commission. —

(1) Prior to the first Monday of August the auditor of each county in the state shall notify the state tax commission of the net taxable value of all property situated within each taxing unit or district in the county from the property roll for the current year and shall provide an estimate of the net taxable value for each taxing unit or district from the current year's estimated subsequent and missed property rolls. Such notification shall also include an estimate of the net taxable value within any area annexed during the immediate prior year to any taxing unit or district.

(2) Prior to the first Monday of March the auditor of each county in the state shall notify the state tax commission of the net taxable value of all property situated within each taxing unit or district in the county from the subsequent and missed property rolls. Such notification shall also include an estimate of the net taxable value within any area annexed during the immediate prior year, and listed on the subsequent or missed property roll, to any taxing unit or district.

(3) The notification required in subsections (1) and (2) of this section shall be on forms prescribed and provided by the state tax commission and shall list separately the value exempt from property taxation in accordance with section 63-602G, Idaho Code, and the value in excess of the equalized assessment valuation as shown on the base assessment roll in any revenue allocation area, pursuant to chapters 20 and 29, title 50, Idaho Code.

(4) For the purposes of this section, "taxing district," as defined in section 63-201(28), Idaho Code, shall include each incorporated city in each county, regardless of whether said city certifies a property tax budget.

History.

I.C., § 63-510, as added by 1996, ch. 98, § 6, p. 308; am. 2008, ch. 53, § 3, p. 134; am.

2008, ch. 400, § 4, p. 1098; am. 2009, ch. 11, § 23, p. 14.

STATUTORY NOTES**Amendments.**

This section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 53, updated the section reference in subsection (4) in light of the 2008 amendment of § 63-201.

The 2008 amendment, by ch. 400, updated the section reference in subsection (4) in light of the 2008 amendment of § 63-201.

The 2009 amendment, by ch. 11, updated the section reference in subsection (4) in light of the 2008 amendment of § 63-201.

Effective Dates.

Section 10 of S.L. 2008, ch. 400 provided that the act should take effect on and after January 1, 2009.

63-511. Appeals from county board of equalization. — (1) Any time within thirty (30) days after mailing of notice of a decision of the board of equalization, or pronouncement of a decision announced at a hearing, an appeal of any act, order or proceeding of the board of equalization, or the failure of the board of equalization to act may be taken to the board of tax appeals. Such appeal may only be filed by the property owner, the assessor, the state tax commission or by a person aggrieved when he deems such action illegal or prejudicial to the public interest. Nothing in this section shall be construed so as to suspend the payment of property taxes pending said appeal.

(2) Notice of such appeal stating the grounds therefor shall be filed with the county auditor, who shall forthwith transmit to the board of tax appeals a copy of said notice, together with a certified copy of the minutes of the proceedings of the board of equalization resulting in such act, order or proceeding, or a certificate to be furnished by the clerk of the board that said board of equalization has failed to act in the time required by law on any complaint, protest, objection, application or petition in regard to assessment of the complainant's property, or a petition of the state tax commission. The county auditor shall also forthwith transmit all evidence taken in connection with the matter appealed. The county auditor shall submit all such appeals to the board of tax appeals within thirty (30) days of being notified of the appeal. The board of tax appeals may receive further evidence and will hear the appeal as provided in chapter 38, title 63, Idaho Code.

(3) Any appeal that may be taken to the board of tax appeals may, during the same time period, be taken to the district court for the county in which the property is located.

(4) In any appeal taken to the board of tax appeals or the district court pursuant to this section, the burden of proof shall fall upon the party seeking affirmative relief to establish that the valuation from which the appeal is taken is erroneous, or that the board of equalization erred in its decision regarding a claim that certain property is exempt from taxation, the value thereof, or any other relief sought before the board of equalization. A preponderance of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the party seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil

litigation. The board of tax appeals or the district court shall render its decision in writing, including therein a concise statement of the facts found by the court and the conclusions of law reached by the court. The board of tax appeals or the court may affirm, reverse, modify or remand any order of the board of equalization, and shall grant other relief, invoke such other remedies, and issue such orders in accordance with its decision, as appropriate.

History.

I.C., § 63-511, as added by 1996, ch. 98, § 6, p. 308; am. 1999, ch. 107, § 1, p. 334; am.

2003, ch. 266, § 3, p. 703; am. 2013, ch. 24, § 1, p. 45.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 24, deleted "or by no later than October 1, whichever is later"

from the end of the next-to-last sentence in subsection (2).

JUDICIAL DECISIONS

ANALYSIS

Burden of proof.

Exhaustion of administrative remedies.

Burden of Proof.

Taxpayer had the burden, by only a preponderance of the evidence, to show that real property valuations were erroneous, both before the board of tax appeals and in the district court. There was no reversible error, however, in also citing the clear and convincing standard, because the district court's order showed that the evidence failed to even meet the lower burden of proof. *Wurzburg v. Kootenai County*, — Idaho —, 308 P.3d 936 (Ct. App. 2013).

Exhaustion of Administrative Remedies.

Taxpayer who appealed a county tax assessment ruling to the board of tax appeals but was not present at the board's hearing failed to exhaust his administrative remedies and, thus, was not entitled to judicial review, because a board rule required him to actually appear and participate in the hearing. *Blanton v. Canyon County*, 144 Idaho 718, 170 P.3d 383 (2007).

CHAPTER 6

EXEMPTIONS FROM TAXATION

SECTION.

- 63-602. Property exempt from taxation.
- 63-602A. Property exempt from taxation — Government property.
- 63-602B. Property exempt from taxation — Religious limited liability companies, corporations or societies.
- 63-602C. Property exempt from taxation — Fraternal, benevolent, or charitable limited liability companies, corporations or societies.
- 63-602E. Property exempt from taxation — Property used for school or educational purposes.
- 63-602G. Property exempt from taxation — Homestead.

SECTION.

- 63-602W. Business inventory exempt from taxation — Business inventory that is a component of real property that is a single family dwelling.
- 63-602JJ. Property exempt from taxation — Certain operating property of producer of electricity by means of wind energy or by means of geothermal energy.
- 63-602KK. Property exempt from taxation — Certain personal property.
- 63-602LL, 63-602MM. [Reserved.]
- 63-602NN. Property exempt from taxation — Certain business property.
- 63-602OO. Property exempt from taxation — Oil or gas related wells.

63-602. Property exempt from taxation. — (1) Property shall be exempt from taxation as provided in titles 21, 22, 25, 26, 31, 33, 39, 41, 42, 49, 50, 67 and 70, Idaho Code, and in chapters 6, 24, 30, 35 and 45, title 63, Idaho Code; provided, that no deduction shall be made in assessment of shares of capital stock of any corporation or association for exemptions claimed under this section, and provided further, that the term “full cash value” wherever used in this act shall mean the actual assessed value of the property as to which an exemption is claimed.

(2) The use of the words “exclusive” or “exclusively” in this chapter shall mean used exclusively for any one (1) or more, or any combination of, the exempt purposes provided hereunder and property used for more than one (1) exempt purpose, pursuant to the provisions of sections 63-602A through 63-602OO, Idaho Code, shall be exempt from taxation hereunder so long as the property is used exclusively for one (1) or more or any combination of the exempt purposes provided hereunder.

(3) All exemptions from property taxation claimed shall be approved annually by the board of county commissioners or unless otherwise provided:

(a) Exemptions pursuant to sections 63-602A, 63-602F, 63-602I, 63-602J, 63-602K for land of more than five (5) contiguous acres, 63-602L(1), 63-602M, 63-602R, 63-602S, 63-602U, 63-602V, 63-602W, 63-602Z, 63-602DD(1), 63-602EE, 63-602OO, 63-2431, 63-3502, 63-3502A and 63-3502B, Idaho Code, do not require application or approval by the board of county commissioners. For all other exemptions in title 63, Idaho Code, the process of applying is as specified in the exemption statutes or, if no process is specified and application is necessary to identify the property eligible for the exemption, annual application is required. Exemptions in other titles require no application.

(b) For exemptions that require an application, provided such exemptions are for property otherwise subject to assessment by the county assessor, the application must be made to the county commissioners by April 15 and the taxpayer and county assessor must be notified of any decision by May 15, unless otherwise provided by law. The decision of the county commissioners and any subsequent assessment notices sent to the taxpayer may be appealed to the county board of equalization pursuant to sections 63-501 and 63-501A, Idaho Code.

(c) For exemptions that require an application, provided such exemptions are for property otherwise subject to assessment by the state tax commission, application for exemption shall be included with the annual operator’s statement as required pursuant to section 63-404, Idaho Code. Notice of the decision and its effect on the assessment will be provided in accordance with procedures specified in chapter 4, title 63, Idaho Code. Appeals shall be to the state tax commission in accordance with section 63-407, Idaho Code.

History.

I.C., § 63-602, as added by 1996, ch. 98,
§ 7, p. 308; am. 2010, ch. 133, § 1, p. 283; am.

2012, ch. 4, § 3, p. 6; am. 2014, ch. 20, § 1, p.
26.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 133, in subsection (2), substituted “63-602NN” for “63-602Z”; and in subsection (3), added “unless otherwise provided in this chapter.”

The 2012 amendment, by ch. 4, substituted “titles 21, 22, 25, 26, 31, 33, 39, 41, 42, 49, 50, 67 and 70, Idaho Code, and in chapters 6, 24, 30, 35 and 45, title 63, Idaho Code” for “this chapter” in subsection (1); and, in subsection (3), rewrote the introductory paragraph, which formerly read, “All exemptions from property taxation claimed under this chapter shall be approved annually by the county board of equalization unless otherwise provided in this chapter” and added paragraphs (a) through (c).

The 2014 amendment, by ch. 20, substituted “sections 63-602A through 63-602OO” for “sections 63-602A through 63-602NN” in subsection (2); and inserted “63-602OO” in subsection (3)(a).

Compiler’s Notes.

S.L. 2014, Chapter 20 became law without the signature of the governor.

Effective Dates.

Section 3 of S.L. 2010, ch. 133 declared an emergency retroactively to January 1, 2010 and approved March 29, 2010.

Section 2 of S.L. 2014, ch. 20 declared an emergency and made this section retroactive to January 1, 2014.

63-602A. Property exempt from taxation — Government property. — (1) The following property is exempt from taxation: property belonging to the United States, except when taxation thereof is authorized by the congress of the United States; property belonging to the state of Idaho; property belonging to a federally recognized Indian tribe, as defined in section 67-4001, Idaho Code, which property is situated within the boundaries of the reservation of the Indian tribe; and property belonging to any county or municipal corporation or school district within this state.

(2) However, inventory property acquired under agricultural credit programs of the consolidated farm service agency of the United States department of agriculture shall be subject to taxation as other property in the county.

(3) However, unimproved real property of more than ten (10) contiguous acres owned in fee simple by the department of fish and game shall be subject to a fee in lieu of property taxes contingent upon the following conditions and requirements:

(a) The fee in lieu of property taxes shall not exceed the property tax for the property at the time of acquisition by the department of fish and game, unless the property tax rate for the property shall have been increased.

(b) The department shall determine and identify the parcels of property and their current use as qualified under the provisions of this chapter. The department shall consult with the appropriate county treasurer and determine the fee to be paid on the property and credited continuously to the county current expense fund. The fee shall be an amount equal to the property tax the property would generate if assessed as agricultural property.

(c) Any future increase in the fee paid in lieu of property taxes shall be determined by the amount of property taxes the property would generate if assessed as agricultural property. The increase may be determined by the department working cooperatively with the appropriate county assessor. The method used for determining the fee that would be due on department property is to be used only under this subsection and has no other application in any other section of the Idaho Code.

(d) The department shall then provide to the assessor of the county where the parcels are located on or before the second Monday of March each year, a listing identifying each parcel of unimproved property by legal description, size and amount of the fee for the preceding calendar year. The treasurer shall prepare and submit a billing for payment based on this information to the department. Once the fee has been determined, payment shall be made by June 20 of that year from moneys appropriated for that purpose. However, if the fees exceed the moneys appropriated for that purpose, the director of the department of fish and game shall calculate the percent reduction that must be made and certify the proportionate reduction to each county treasurer.

(e) For the purpose of this section only, unimproved real property shall mean property on which no homesite or improved site is located, and homesite or improved site shall mean any buildings, structures, or fixtures which have been erected or affixed to the land and the necessary acreage required to utilize the homesite or improved site as determined by the county assessor shall be exempt. For purposes of this subsection only, roads or fences shall not be considered as improvements.

History.

I.C., § 63-602A, as added by 1996, ch. 98, § 7, p. 308; am. 2003, ch. 8, § 2, p. 14; am. 2013, ch. 134, § 1, p. 306.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 134, substituted “property belonging to the state of Idaho; property belonging to a federally recognized Indian tribe, as defined in section 67-4001, Idaho Code, which property is situ-

ated within the boundaries of the reservation of the Indian tribe; and property belonging” for “this state, or” in subsection (1) and substituted “this chapter” for “this act” at the end of the first sentence in paragraph (3)(b).

63-602B. Property exempt from taxation — Religious limited liability companies, corporations or societies. — (1) The following property is exempt from taxation: property belonging to any religious limited liability company, corporation or society of this state, used exclusively for and in connection with any combination of religious, educational, or recreational purposes or activities of such religious limited liability company, corporation or society, including any and all residences used for or in furtherance of such purposes.

(2) If the entirety of any property belonging to any such religious limited liability company, corporation or society is leased by such owner, or if such religious limited liability company, corporation or society uses the entirety of such property for business or commercial purposes from which a revenue is derived, then the same shall be assessed and taxed as any other property. If any such property is leased in part or used in part by such religious limited liability company, corporation or society for such business or commercial purposes, the assessor shall determine the value of the entire exempt property, and the value of the part used or leased for such business or commercial purposes, and that part used or leased for such business or commercial purposes shall be taxed as any other property. The Idaho state tax commission shall promulgate rules establishing a method of determin-

ing the value of the part used or leased for such business or commercial purposes. If the value of the part used or leased for such business or commercial purposes is determined to be three percent (3%) or less of the value of the entirety, the whole of said property shall remain exempt. If the value of the part used or leased for such business or commercial purposes is determined to be more than three percent (3%) of the value of the entirety, the assessor shall assess such proportionate part of such property, and shall assess the trade fixtures used in connection with the sale of all merchandise for such business or commercial purposes, provided however, that the use or lease of any property by any such religious limited liability company, corporation or society for athletic or recreational facilities, residence halls or dormitories, meeting rooms or halls, auditoriums, or club rooms for and in connection with the purposes for which such religious limited liability company, corporation or society is organized, shall not be deemed a business or commercial purpose, even though fees or charges be imposed and revenue derived therefrom.

History.

I.C., § 63-602B, as added by 1996, ch. 98,

§ 7, p. 308; am. 2007, ch. 38, § 1, p. 95; am. 2008, ch. 50, § 1, p. 122.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 50, inserted "limited liability company" in the section heading and throughout the section text.

Effective Dates.

Section 3 of S.L. 2008, ch. 50 declared an emergency retroactively to January 1, 2008 and approved March 3, 2008.

63-602C. Property exempt from taxation — Fraternal, benevolent, or charitable limited liability companies, corporations or societies. — The following property is exempt from taxation: property belonging to any fraternal, benevolent, or charitable limited liability company, corporation or society, the World War veteran organization buildings and memorials of this state, used exclusively for the purposes for which such limited liability company, corporation or society is organized; provided, that if any building or property belonging to any such limited liability company, corporation or society is leased by such owner or if such limited liability company, corporation or society uses such property for business purposes from which a revenue is derived which, in the case of a charitable organization, is not directly related to the charitable purposes for which such charitable organization exists, then the same shall be assessed and taxed as any other property, and if any such property is leased in part or used in part by such limited liability company, corporation or society for such purposes the assessor shall determine the value of the entire building and the value of the part used or leased for commercial purposes. If the value of the part used for commercial purposes is determined to be three percent (3%) or less than the value of the entirety, the whole of said property shall remain exempt. If the value of the part used for commercial purposes is determined to be more than three percent (3%) of the value of the entirety, the assessor shall assess such proportionate part of such building including the value of the real estate as is so leased or used for such purposes, and

shall assess the trade fixtures used in connection with the sale of all merchandise; provided however, that the lease or use of any property by any such limited liability company, corporation or society for athletic or recreational facilities, residence halls or dormitories, meeting rooms or halls, auditoriums or club rooms within the purposes for which such limited liability company, corporation or society is organized, shall not be deemed a business or commercial purpose, even though fees or charges be imposed and revenue derived therefrom.

History.

I.C., § 63-602C, as added by 1996, ch. 98,

§ 7, p. 308; am. 2003, ch. 8, § 3, p. 14; am. 2008, ch. 50, § 2, p. 123.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 50, inserted "limited liability company" in the section heading and throughout the section text.

Effective Dates.

Section 3 of S.L. 2008, ch. 50 declared an emergency retroactively to January 1, 2008 and approved March 3, 2008.

63-602E. Property exempt from taxation — Property used for school or educational purposes. — (1) The following property is exempt from taxation: all property used exclusively for nonprofit school or educational purposes, property used for charter school purposes, and all property from which no profit is derived and which is held or used exclusively for endowment, building or maintenance purposes of schools or educational institutions.

(2) If property is used primarily for nonprofit school purposes or charter school purposes and for business purposes from which a revenue is derived, which revenue is not related to the educational purpose for which the nonprofit school or charter school exists, the assessor shall determine the value of the entire property, of the part used for nonprofit school purposes or charter school purposes, and of the part used for such unrelated business purposes. The portion of the building used for nonprofit school purposes or charter school purposes and for business and administration of the nonprofit school or charter school shall be exempt from taxation.

(3) Possessory interests in improvements on state college or state university owned land used exclusively for student housing, college or university operated dining, or other education related purposes approved by the state board of education and board of regents of the university of Idaho as proper for the operation of such state college or university shall be exempt from taxation.

History.

I.C., § 63-602E, as added by 1996, ch. 98, § 7, p. 308; am. 2003, ch. 222, § 1, p. 574; am.

2006, ch. 366, § 1, p. 1104; am. 2010, ch. 254, § 2, p. 644.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 254, added subsection (3).

Effective Dates.

Section 3 of S.L. 2010, ch. 254 declared an emergency retroactively to January 1, 2010

and approved April 8, 2010.

63-602G. Property exempt from taxation — Homestead. —

(1) During the tax year 2006 and each year thereafter, subject to annual adjustment as provided herein, the first seventy-five thousand dollars (\$75,000) of the market value for assessment purposes of the homestead as that term is defined in section 63-701, Idaho Code, or fifty percent (50%) of the market value for assessment purposes of the homestead as that term is defined in section 63-701, Idaho Code, whichever is the lesser, shall be exempt from property taxation. Beginning for tax year 2007, the state tax commission shall publish adjustments to the maximum amount subject to property tax exemption to reflect cost-of-living fluctuations. The adjustments shall effect changes in the amount subject to tax exemption by a percentage equal as near as practicable to the annual change in the Idaho housing price index as determined by the United States office of federal housing enterprise oversight. The state tax commission shall publish the adjustments required by this subsection each and every year the office of federal housing enterprise oversight announces a change in the Idaho housing price index. The adjustments shall be published no later than October 1 of each year and shall be effective for claims filed in and for the following property tax year. The publication of adjustments under this subsection shall be exempt from the provisions of chapter 52, title 67, Idaho Code, but shall be provided to each county and to members of the public upon request and without charge.

(2) The exemption allowed by this section may be granted only if:

(a) The homestead is owner-occupied and used as the primary dwelling place of the owner as of January 1, provided that in the event the homestead is owner-occupied after January 1 but before April 15, the owner of the property is entitled to the exemption. The homestead may consist of part of a multidwelling or multipurpose building and shall include all of such dwelling or building except any portion used exclusively for anything other than the primary dwelling of the owner. The presence of an office in a homestead, which office is used for multiple purposes, including business and personal use, shall not prevent the owner from claiming the exemption provided in this section; and

(b) The state tax commission has certified to the board of county commissioners that all properties in the county which are subject to appraisal by the county assessor have, in fact, been appraised uniformly so as to secure a just valuation for all property within the county; and

(c) The owner has certified to the county assessor by April 15 that:

- (i) He is making application for the exemption allowed by this section;
- (ii) The homestead is his primary dwelling place; and
- (iii) He has not made application in any other county for the exemption, and has not made application for the exemption on any other homestead in the county.

(d) For the purpose of this section, the definition of "owner" shall be the same definition set forth in section 63-701(7), Idaho Code.

When an "owner," pursuant to the provisions of section 63-701(7), Idaho Code, is any person who is the beneficiary of a revocable or irrevocable trust, or who is a partner of a limited partnership, a member of a limited liability company, or shareholder of a corporation, he or she may provide proof of the trust, limited partnership, limited liability company, or corporation in the manner set forth in section 63-703(4), Idaho Code.

(e) Any owner may request in writing the return of all copies of any documents submitted with the affidavit set forth in section 63-703(4), Idaho Code, that are held by a county assessor, and the copies shall be returned by the county assessor upon submission of the affidavit in proper form.

(f) For the purpose of this section, the definition of "primary dwelling place" shall be the same definition set forth in section 63-701(8), Idaho Code.

(g) For the purpose of this section, the definition of "occupied" shall be the same definition set forth in section 63-701(6), Idaho Code.

(3) An owner need only make application for the exemption described in subsection (1) of this section once, as long as all of the following conditions are met:

(a) The owner has received the exemption during the previous year as a result of his making a valid application as defined in subsection (2)(c) of this section.

(b) The owner or beneficiary, partner, member or shareholder, as appropriate, still occupies the same homestead for which the owner made application.

(c) The homestead described in subsection (3)(b) of this section is owner-occupied or occupied by a beneficiary, partner, member or shareholder, as appropriate, and used as the primary dwelling place of the owner or beneficiary, partner, member or shareholder, as appropriate, as of January 1; provided however, that in the event the homestead is owner-occupied after January 1, but before April 15, the owner of the property is entitled to the exemption.

(4) The exemption allowed by this section must be taken before the reduction in taxes provided by sections 63-701 through 63-710, Idaho Code, is applied.

(5) Recovery of property tax exemptions allowed by this section but improperly claimed or approved:

(a) Upon discovery of evidence, facts or circumstances indicating any exemption allowed by this section was improperly claimed or approved, the county assessor shall decide whether the exemption claimed should have been allowed, and if not, notify the taxpayer in writing, assess a recovery of property tax and notify the county treasurer of this assessment. If the county assessor determined that an exemption was improperly approved as a result of county error, the county assessor shall present the discovered evidence, facts or circumstances from the improperly approved exemption to the board of county commissioners, at which time the board may waive a recovery of the property tax and notify such taxpayer in writing.

(b) When information indicating that an improper claim for the exemption allowed by this section is discovered by the state tax commission, the state tax commission may disclose this information to the appropriate county assessor, board of county commissioners and county treasurer. Information disclosed to county officials by the state tax commission under this subsection may be used to decide the validity of any entitlement to the exemption provided in this section and is not otherwise subject to public disclosure pursuant to chapter 3, title 9, Idaho Code.

(c) The assessment and collection of the recovery of property tax must begin within the seven (7) year period beginning the date the assessment notice reflecting the improperly claimed or approved exemption was required to be mailed to the taxpayer.

(d) The taxpayer may appeal to the county board of equalization the decision by the county assessor to assess the recovery of property tax within thirty (30) days of the date the county assessor sent the notice to the taxpayer pursuant to this section. The board may waive the collection of all or part of any costs, late charges and interest, in order to facilitate the collection of the recovery of the property tax.

(e) For purposes of calculating the tax, the amount of the recovered property tax shall be for each year the exemption allowed by this section was improperly claimed or approved, up to a maximum of seven (7) years. The amount of the recovery of property tax shall be calculated using the product of the amount of exempted value for each year multiplied by the levy for that year plus costs, late charges and interest for each year at the rates equal to those provided for delinquent property taxes during that year.

(f) Any recovery of property tax shall be due and payable no later than the date provided for property taxes in section 63-903, Idaho Code, and if not timely paid, late charges and interest, beginning the first day of January in the year following the year the county assessor sent the notice to the taxpayer pursuant to this section, shall be calculated at the current rate provided for property taxes.

(g) Recovered property taxes shall be billed, collected and distributed in the same manner as property taxes, except each taxing district or unit shall be notified of the amount of any recovered property taxes included in any distribution.

(h) Thirty (30) days after the taxpayer is notified, as provided in subsection (5)(a) of this section, the assessor shall record a notice of intent to attach a lien. Upon the payment in full of such recovered property taxes prior to the attachment of the lien as provided in subsection (5)(i) of this section, or upon the successful appeal by the taxpayer, the county assessor shall record a rescission of the intent to attach a lien within seven (7) business days of receiving such payment or within seven (7) business days of the county board of equalization decision granting the appeal. If the real property is sold to a bona fide purchaser for value, prior to the recording of the notice of the intent to attach a lien, the county assessor and treasurer shall cease the recovery of such unpaid recovered property tax.

(i) Any unpaid recovered property taxes shall become a lien upon the real property in the same manner as provided for property taxes in section 63-206, Idaho Code, except such lien shall attach as of the first day of January in the year following the year the county assessor sent the notice to the taxpayer pursuant to this section.

(j) For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this subsection as recovery of property tax shall be treated as property tax revenue.

(6) The legislature declares that this exemption is necessary and just.

(7) A homestead, having previously qualified for exemption under this section in the preceding year, shall not lose such qualification due to: the owner's, beneficiary's, partner's, member's or shareholder's absence in the current year by reason of active military service, or because the homestead has been leased because the owner, beneficiary, partner, member or shareholder is absent in the current year by reason of active military service. An owner subject to the provisions of this subsection must apply for the exemption with the county assessor every year on or before a deadline date as specified by the county assessor for the county in which the homestead is claimed. If an owner fails to apply on or before the established deadline, the county may, at its discretion, discontinue the exemption for that year.

(8) A homestead, having previously qualified for exemption under this section in the preceding year, shall not lose such qualification due to the owner's, beneficiary's, partner's, member's or shareholder's death during the year of the owner's, beneficiary's, partner's, member's or shareholder's death and the tax year immediately following such death provided that the homestead continues to be a part of the owner's, beneficiary's, partner's, member's or shareholder's estate. After such time the new owner shall reapply to receive the exemption pursuant to this section and shall meet the qualification criteria contained in this section.

History.

I.C., § 63-602G, as added by 1996, ch. 98, § 7, p. 308; am. 1997, ch. 358, § 1, p. 1058; am. 1999, ch. 382, § 1, p. 1047; am. 2001, ch. 69, § 1, p. 129; am. 2001, ch. 166, § 1, p. 576; am. 2004, ch. 156, § 1, p. 495; am. 2004, ch.

190, § 1, p. 597; am. 2005, ch. 283, § 1, p. 919; am. 2006, ch. 429, § 1, p. 1313; am. 2007, ch. 39, § 1, p. 96; am. 2009, ch. 7, § 1, p. 7; am. 2012, ch. 214, § 1, p. 581; am. 2013, ch. 21, § 4, p. 36; am. 2014, ch. 324, § 1, p. 802.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 7, in the third sentence in subsection (1), substituted "annual change in the Idaho housing price index" for "annual increase in the Idaho housing price index."

The 2012 amendment, by ch. 214, added subsection (8).

The 2013 amendment, by ch. 21, in subsection (5), substituted "county board of equalization" for "board of county commissioners" in the first sentence in paragraph (d) and substituted "county board of equalization" for

"county commissioners" near the end of the second sentence in paragraph (h).

The 2014 amendment, by ch. 324, rewrote subsection (7), relating to what is considered to be active military duty for purposes of the homestead exemption.

Effective Dates.

Section 2 of S.L. 2009, ch. 7 declared an emergency retroactively to January 1, 2009. Approved February 19, 2009.

Section 2 of S.L. 2012, ch. 214 declared an emergency and made this section retroactive to January 1, 2012. Approved April 3, 2012.

JUDICIAL DECISIONS

Cited in: Bradbury v. Idaho Judicial Council, 149 Idaho 107, 233 P.3d 38 (2009).

63-602K. Property exempt from taxation — Speculative portion of value of agricultural land.

JUDICIAL DECISIONS

Requirements.

Whether an agricultural use of undeveloped property violates a local zoning ordinance has no relevance to the requirements

for a property tax exemption for agricultural land under § 63-604 and this section. Thompson Dev., LLC v. Bd. of Appeals, 153 Idaho 646, 289 P.3d 48 (2012).

63-602W. Business inventory exempt from taxation — Business inventory that is a component of real property that is a single family dwelling. — The following property is exempt from property taxation: business inventory. For the purpose of this section, “business inventory” means all items of tangible personal property or other property, including site improvements, described as:

(1) All livestock, fur-bearing animals, fish, fowl and bees.

(2) All nursery stock, stock-in-trade, merchandise, products, finished or partly finished goods, raw materials, and all forest products subject to the provisions of chapter 17, title 63, Idaho Code, supplies, containers and other personal property that is held for sale or consumption in the ordinary course of the taxpayer’s manufacturing, farming, wholesale jobbing, or merchandising business.

(3) Residential improvements never occupied. Once residential improvements are occupied as defined in section 63-317, Idaho Code, they shall be subject to the tax provided by section 63-317, Idaho Code. The provisions of section 63-602Y, Idaho Code, shall not apply to the exemption provided by this subsection. The exemption provided by this subsection applies only to improvements to real property, and only until first occupied. For purposes of this section, the term “residential improvements” means only:

(a) Single family residences; or

(b) Residential townhouses; or

(c) Residential condominium units.

The nonresidential portion of an improvement to real property that is used or is to be used for residential and nonresidential purposes does not qualify for the exemption provided by this section. If an improvement contains multiple residential units, each such unit shall lose the exemption provided in this section when it becomes occupied.

(4) Site improvements that are associated with land, such as roads and utilities, on real property held by the land developer, either as owner or vendee in possession under a land sale contract, for sale or consumption in the ordinary course of the land developer’s business until other improvements, such as buildings or structural components of buildings, are begun or the real property is conveyed to a third party. For purposes of this subsection, a transfer of title to real property to a legal entity of which at

least fifty percent (50%) is owned by the land developer, the land developer's original entity or the same principals who owned the land developer's original entity shall not be considered a conveyance to a third party. For purposes of this subsection, the amount of the exemption shall be the difference between the market value of the land with site improvements and the market value of the land without site improvements as shall be determined by a comparative market analysis of a similarly situated parcel or parcels of real property that have not been improved with such site improvements contemplated by this subsection. In the case the market value of land without site improvements cannot be reasonably assessed because of the absence of comparable sales, an exemption value of seventy-five percent (75%) of the market value of land with site improvements shall be granted to that parcel. An application is required for the exemption provided in this subsection in the first year the exemption is claimed; in subsequent consecutive years no new application is required. The application must be made to the board of county commissioners by April 15 and the taxpayer and county assessor must be notified of any decision and assessment of property by May 15. The decision or assessment of property, or both, of the board of county commissioners may be appealed to the county board of equalization no later than the fourth Monday in June. The applicant shall notify the board of county commissioners in writing of any change in eligibility for the parcel by April 15.

History.

I.C., § 63-602W, as added by 1996, ch. 98, § 7, p. 308; am. 1997, ch. 242, § 1, p. 703; am.

1998, ch. 95, § 1, p. 341; am. 2012, ch. 192, § 1, p. 517; am. 2013, ch. 276, § 1, p. 714.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 192, inserted "including site improvements" in the introductory paragraph and added subsection (4).

The 2013 amendment, by ch. 276, rewrote subsection (4), which formerly read: "Site improvements, that are associated with land, such as roads and utilities, on real property held by the land developer for sale or consumption in the ordinary course of the land developer's business until other improvements, such as buildings or structural components of buildings, are begun or title to the land is conveyed from the land developer. An application is required for the exemption provided in this subsection."

Compiler's Notes.

S.L. 2012, Chapter 192 became law without the signature of the governor.

S.L. 2013, Chapter 276 became law without the signature of the governor.

Effective Dates.

Section 3 of S.L. 2012, ch. 192 declared an emergency and made this section retroactive to January 1, 2012.

Section 2 of S.L. 2013, ch. 276 declared an emergency and made this section retroactive to January 1, 2013.

63-602JJ. Property exempt from taxation — Certain operating property of producer of electricity by means of wind energy or by means of geothermal energy. — The following property is exempt from taxation: (i) operating property of producers of electricity by means of wind energy exclusively used to produce electricity by means of wind energy on which the tax on gross wind energy earnings will be paid; and (ii) operating property of producers of electricity by means of geothermal energy exclu-

sively used to produce electricity by means of geothermal energy on which the tax on gross geothermal energy earnings will be paid.

History.

I.C., § 63-602JJ, as added by 2007, ch. 143,
§ 7, p. 415; am. 2008, ch. 227, § 8, p. 699.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 227, in the section catchline, added “or by means of geothermal energy”; and added the paragraph (i) designation and added paragraph (ii).

Effective Dates.

Section 9 of S.L. 2008, ch. 227 declared an emergency retroactively to January 1, 2008. Approved March 20, 2008.

63-602KK. Property exempt from taxation — Certain personal property. —

(1)(a) An item of taxable personal property purchased on or after January 1, 2013, shall be exempt from property taxation if the item of taxable personal property has an acquisition price of three thousand dollars (\$3,000) or less.

(b) For purposes of this section, the term “acquisition cost” means all costs required to put an item of taxable personal property into service and includes:

- (i) The purchase price of a new or used item;
- (ii) The cost of freight and shipping;
- (iii) The cost of installation, engineering, erection or assembly; and
- (iv) Sales and use taxes.

(c) For purposes of this subsection, an “item of taxable personal property” means equipment, machinery, furniture or other personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable personal property is not an individual component part of a piece of equipment, machinery, furniture or other personal property as a whole. An item of taxable personal property does not include an improvement to real property, a part that will become an improvement, or anything defined as a fixture.

(2) On and after January 1, 2013, each taxpayer’s personal property, located in the county, which is not otherwise exempt, shall be exempt to the extent of one hundred thousand dollars (\$100,000). For the purposes of this section, a taxpayer includes two (2) or more individuals using the property in a common enterprise or a related group of two (2) or more organizations when the individuals or organizations are within a relationship described in section 267 of the Internal Revenue Code, as defined in section 63-3004, Idaho Code.

(3)(a) No later than the third Monday of November 2013, the county clerk of each county shall certify to the state tax commission the amount of exemption from property taxes under subsection (2) of this section, in that county for that year. The certification shall identify the property receiving tax reductions, the value of the property, the property’s location, the

amount of the tax levy applicable to personal property in the location, and the tax before and after the exemption allowed in subsection (2) of this section. The certification shall be in the form prescribed by the state tax commission and shall include such additional information as the commission may require by rule as needed to implement the purpose of this section. The certification shall be reviewed and, if necessary, corrected by the state tax commission.

(b) For the year beginning January 1, 2014, and every year thereafter, the amount of annual replacement of property tax on personal property exempted pursuant to subsection (2) of this section shall be the amount approved by the state tax commission pursuant to paragraph (a) of this subsection.

(4)(a) Subject to the limitations of this section, the state tax commission shall reimburse from the amount appropriated for personal property tax replacement in section 63-3638, Idaho Code, the county treasurer of each county for the reduction on the certification provided in subsection (3) of this section. The county treasurer shall reimburse from the amount received to each taxing district within the county an amount in proportion to the amount of reduction shown on the certification in subsection (3) of this section as corrected. The amount that would otherwise be attributable to tax revenues derived from tax levies on personal property exempted by this section within an existing revenue allocation area as defined in section 50-2903(15), Idaho Code, shall be paid directly by the county treasurer to such public body or agency entitled thereto, equal to the amounts that would have been distributed in accordance with the formula for such distribution set forth in section 50-2908, Idaho Code. Taxing districts created on or after January 1, 2013, shall not be eligible for the reimbursement provided for in this paragraph.

(b) The state tax commission shall pay one-half (1/2) of the reimbursement provided in this section no later than December 20 of each year, and the second one-half (1/2) shall be paid by no later than June 20 of the following year. The money received by the county tax collector under the provisions of this section may be considered by counties and other taxing districts and budgeted against at the same time, and in the same manner, and in the same year as revenues from taxation. The total amount paid to the county treasurers shall not exceed the amount certified to the state tax commission under subsection (3) of this section.

(c) For purposes of the limitation provided by section 63-802, Idaho Code, moneys received from distributions pursuant to section 63-3638, Idaho Code, as property tax replacement for the taxable value of property exempt from taxation pursuant to this section shall be treated as property tax revenues.

(5)(a) Nothing contained in this section shall affect the taxation of forest lands or forest products pursuant to chapter 17, title 63, Idaho Code, or the taxation of the net profits of mines pursuant to chapter 28, title 63, Idaho Code.

(b) The exemption from personal property tax provided for in subsection (2) of this section shall not apply to motor vehicles, recreational vehicles,

aircraft and boats that are not registered with the state of Idaho and for which required registration fees have not been paid.

(6)(a) The application for the exemption provided for in subsection (2) of this section shall be in the form prescribed by the state tax commission and shall include such information as the state tax commission may require by rule as needed to implement the purpose of this section including, but not limited to, a list of each item of personal property, the purchase date of each item of personal property, the unit cost of each item of personal property, if more than the exemption allowed in subsection (1) of this section, and the total cost of the items of personal property.

(b) The application for this exemption, if the county is capable of so providing, may be transmitted by the county assessor electronically, as that term is defined in section 63-115, Idaho Code, when requested by the taxpayer, or mailed by the county assessor to the taxpayer, or his agent or representative at the taxpayer's last known post office address, no later than March 1 of each year. The transmission or mailing of the application shall also include the taxpayer's application for the exemption allowed by this section for the last year in which the taxpayer filed an application.

(c) A taxpayer need only make application for the exemption in this section once as long as all of the following conditions are met:

(i) The taxpayer has received the exemption during the previous year as a result of him making a valid application as defined in this section.

(ii) The amount of the exemption allowed by this section is more than the taxable value of personal property owned by the taxpayer.

(iii) The taxpayer has not made purchases of personal property, excluding items of taxable personal property exempted pursuant to subsection (1) of this section, that would cause the taxable value of the personal property owned by the taxpayer to exceed the maximum amount allowed as an exemption by this section.

(d) Knowingly failing to report changes in the taxable value of personal property that exceed the amount of the exemption allowed pursuant to this section shall subject the taxpayer to a fine not in excess of ten thousand dollars (\$10,000) in addition to other penalties set forth in this chapter.

(7) Recovery of property tax exemptions allowed by this section but improperly claimed:

(a) Upon discovery of evidence, facts or circumstances indicating any exemption allowed by this section was improperly claimed, the county assessor shall decide whether the exemption claimed should have been allowed, and if not, notify the board of county commissioners, at which time the board may waive a recovery of the property tax and notify such taxpayer in writing.

(b) The assessment and collection of the recovery of property tax must begin within the seven (7) year period beginning on the date the assessment notice reflecting the improperly claimed exemption was required to be mailed to the taxpayer.

(c) The taxpayer may appeal to the board of tax appeals the decision by the board of county commissioners to assess the recovery of property tax

within thirty (30) days of the date the county assessor sent the notice to the taxpayer pursuant to this section.

(d) For purposes of calculating the tax, the amount of the recovered property tax shall be for each year the exemption allowed by this section was improperly claimed or approved, up to a maximum of seven (7) years. The amount of the recovery of property tax shall be calculated using the product of the amount of exempted value for each year multiplied by the levy for that year plus costs, late charges and interest for each year at the rates equal to those provided for delinquent property taxes during that year. In cases of fraud, the fine set forth in subsection (6)(d) of this section shall be assessed for each tax year.

(e) Any recovery of property tax shall be due and payable no later than the date provided for property taxes in section 63-903, Idaho Code, and if not timely paid, late charges and interest, beginning the first day of January in the year following the year the county assessor sent the notice to the taxpayer pursuant to this section, shall be calculated at the current rate provided for property taxes.

(f) Recovered property taxes shall be billed, collected and distributed in the same manner as property taxes, except each taxing district or unit shall be notified of the amount of any recovered property taxes included in any distribution.

(g) Thirty (30) days after the taxpayer is notified, as provided in subsection (7)(a) of this section, the assessor shall record a notice of intent to attach a lien. Upon the payment in full of such recovered property taxes prior to the attachment of the lien as provided in subsection (7)(h) of this section, or upon the successful appeal by the taxpayer, the county assessor shall record a rescission of the intent to attach a lien within seven (7) business days of receiving such payment or within seven (7) business days of the county commissioners' decision granting the appeal.

(h) Any unpaid recovered property taxes shall become a lien upon the taxpayer's personal property in the same manner as provided for property taxes in section 63-206, Idaho Code, except such lien shall attach as of the first day of January in the year following the year the county treasurer sent the notice to the taxpayer pursuant to this section.

(i) For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this subsection as recovery of property tax shall be treated as property tax revenue.

History.

I.C., § 63-602KK, as added by 2008, ch. 400, § 2, p. 1093; am. 2009, ch. 42, § 1, p. 119;

am. 2013, ch. 243, § 1, p. 581; am. 2014, ch. 357, § 4, p. 886.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 42, in the last sentence in subsection (2), inserted "January 1 of the year following" and substituted "fiscal year 2008" for "previous fiscal year"; in the last sentence in subsection (4)(a), substituted

"personal property exempted by this section" for "taxable personal property," deleted "on or before January 1, 2009" following "section 50-2903(15), Idaho Code," and inserted "equal to the amounts that would have been distributed"; and added subsections (6) and (7).

The 2013 amendment, by ch. 243, rewrote the section to the extent that a detailed comparison is impracticable.

The 2014 amendment, by ch. 357, in subsection (6), deleted “every five (5) years” following “this section once” in the introductory language of paragraph (c) and redesignated former paragraph (c)(iv) as present paragraph (d); and, in subsection (7), deleted “per affidavit” at the end of the introductory language and substituted “each tax year” for “each annual affidavit filed” in the last sentence of paragraph (d).

Federal References.

Section 267 of the Internal Revenue Code, referred to in subsection (2), is codified as 26 U.S.C.S. § 267.

Compiler’s Notes.

S.L. 2014, Chapter 357 became law without the signature of the governor.

Effective Dates.

Section 10 of S.L. 2008, ch. 400 provided that the act should take effect on and after January 1, 2009.

Section 4 of S.L. 2009, ch. 42 declared an emergency retroactively to January 1, 2009. Approved March 23, 2009.

Section 5 of S.L. 2013, ch. 243 declared an emergency and made this section retroactive to January 1, 2013. Approved April 3, 2013.

Section 8 of S.L. 2014, ch. 357 declared an emergency and made this section retroactive to January 1, 2014.

63-602LL. [Reserved.]

63-602MM. [Reserved.]

63-602NN. Property exempt from taxation — Certain business property. — (1) During tax year 2008, and each year thereafter, a board of county commissioners may declare that all or a portion of the market value of a defined project based on investment in new plant and building facilities meeting tax incentive criteria as defined in subsection (2) of this section shall be exempt from property taxation.

(2) As used in this section:

(a) “Defined project” means a written plan presented to the county commissioners by a taxpayer outlining projected investment in new plant for new plant and building facilities during a project period and located at a project site.

(b) “Investment in new plant” means investment in new plant and building facilities that are:

(i) Qualified investments; or

(ii) Buildings or structural components of buildings.

(c) “New plant and building facilities” means a manufacturing facility or facilities and personal property related thereto, producing tangible personal property or intellectual property intended for ultimate sale at retail, including related parking facilities, food service facilities, business office facilities and other building facilities directly related to the manufacturing business.

(d) “Project period” means the period of time beginning at the earlier of a physical change to the project site or the first employment of new employees or contractors located in Idaho who are related to the activities at the project site, but no earlier than January 1, 2008.

(e) “Project site” means an area or areas at which new plant and building facilities are located and at which the tax incentive criteria have been or will be met and which are either:

(i) A single geographic area located in this state at which the new plant and building facilities owned or leased by the taxpayer are located; or

- (ii) One (1) or more geographic areas located in this state if eighty percent (80%) or more of the investment required in subsection (2)(h) of this section is made at one (1) of the areas.
- (f) "Qualified investment" shall be as defined in section 63-3029B, Idaho Code.
- (g) "Building or structural components of buildings" means real property improvements to land as defined in section 63-201(11), Idaho Code, which are owned or leased by the taxpayer and located in Idaho within the boundaries of the project site.
- (h) "Tax incentive criteria" means a taxpayer at a project site meeting the requirements of subparagraphs (i) and (ii) of this paragraph:
- (i) During the project period, making capital investments in new plant of at least three million dollars (\$3,000,000) at the project site;
 - (ii) The taxpayer can demonstrate to the county that significant economic benefits will accrue to the county.
- (3) The board of county commissioners may grant the property tax exemption for all or a portion of the market value of the defined project for a period of up to five (5) years. The agreement shall be considered a contract arrangement between the county and the taxpayer for the exemption time period granted by the board of county commissioners and the annual approval provision contained in subsection (3) of section 63-602, Idaho Code, shall not apply to the exemption provided in this section as long as the contract enumerated in this section is valid and in force and effect.
- (4) Property exempted under this section shall not be included on any new construction roll prepared by the county assessor in accordance with section 63-301A, Idaho Code, until the exemption ceases.
- (5) The legislature declares this exemption necessary and just.

History.

I.C., § 63-602NN, as added by 2008, ch.

327, § 1, p. 897; am. 2010, ch. 133, § 2, p. 283.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 133, in subsection (1), inserted "a defined project based on"; added paragraphs (2)(a) and (2)(g), and made related redesignations; in paragraph (2)(c), inserted "and personal property related thereto"; in paragraph (2)(e), deleted the last sentence, which formerly read: "The project site must be identified and described to the county commissioners by a taxpayer subject to tax under chapter 30, title 63, Idaho Code, in the form and manner prescribed by the commission"; deleted former paragraph (2)(h)(ii), which read: "During a period of time beginning on January 1, 2008, and ending at

the conclusion of the project period, the project is located in a rural development zone as defined by the United States department of agriculture rural development's business and industry loan program," and made a related reference update; and in subsection (3), added the language beginning "and the annual approval provision" through to the end.

Effective Dates.

Section 2 of S.L. 2008, ch. 327 declared an emergency retroactively to January 1, 2008. Approved March 31, 2008.

Section 3 of S.L. 2010, ch. 133 declared an emergency retroactively to January 1, 2010. Approved March 29, 2010.

63-60200. Property exempt from taxation — Oil or gas related wells. — The following property is exempt from taxation: wells drilled for the production of oil, gas or hydrocarbon condensate.

History.

I.C., § 63-602OO, as added by 2013, ch. 109, § 1, p. 259.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 2013, ch. 109 declared an emergency and made this section retroactive to January 1, 2013. Approved March 21, 2013.

63-604. Land actively devoted to agriculture defined.**JUDICIAL DECISIONS****ANALYSIS**

Agricultural use not shown.

Exemption.

Agricultural Use Not Shown.

It is unreasonable to read this section as exempting land from taxation where the land was not actually devoted to crop or livestock production and was not in a crop-rotation program; contiguous homesites are not exempted by § 63-604, and the landowners offered no evidence suggesting that some activities consumed more than the additional exempted acre. *Kimbrough v. Idaho Bd. of Tax Appeals & Canyon County Bd. of Equaliza-*

tion (In re *Kimbrough*), 150 Idaho 417, 247 P.3d 644 (2011).

Exemption.

Whether an agricultural use of undeveloped property violates a local zoning ordinance has no relevance to the requirements for a property tax exemption for agricultural land under § 63-602K and this section. *Thompson Dev., LLC v. Bd. of Appeals*, 153 Idaho 646, 289 P.3d 48 (2012).

CHAPTER 7**PROPERTY TAX RELIEF****SECTION.**

63-701. Definitions.

63-706. Time requirements for filing claim.

63-707. Procedure after claim approval.

63-713. Definitions.

63-714. Application — Deferral of property tax.

63-715. Procedures — Appeals.

SECTION.

63-716. Deferral — Interest — Lien — Priority.

63-718. Events terminating deferral — Payment of deferred tax and interest.

63-720. Recovery of erroneous and other improper deferrals.

63-701. Definitions. — As used in this chapter:

(1) "Claimant" means a person who has filed an application under section 63-602G, Idaho Code, and has filed a claim under the provisions of sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1, or before April 15, of the year in which the claimant first filed a claim on the homestead in question, a claimant must be an owner of the homestead and on January 1 of said year a claimant must be:

- (a) Not less than sixty-five (65) years old; or
- (b) A child under the age of eighteen (18) years who is fatherless or motherless or who has been abandoned by any surviving parent or parents; or
- (c) A widow or widower; or
- (d) A disabled person who is recognized as disabled by the social security

administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; or

(e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States department of veterans affairs; or

(f) A person, as specified in 42 U.S.C. 1701, who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage or otherwise; or

(g) Blind.

(2) "Homestead" means the dwelling, owner-occupied by the claimant as described in this chapter and used as the primary dwelling place of the claimant and may be occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home. It may consist of a part of a multidwelling or multipurpose building and part of the land upon which it is built. "Homestead" does not include personal property such as furniture, furnishings or appliances, but a manufactured home may be a homestead.

(3) "Household" means the claimant and the claimant's spouse. The term does not include bona fide lessees, tenants, or roomers and boarders on contract. "Household" includes persons described in subsection (8)(b) of this section.

(4) "Household income" means all income received by the claimant and, if married, all income received by the claimant's spouse, in a calendar year.

(5) "Income" means the sum of federal adjusted gross income as defined in the Internal Revenue Code, as defined in section 63-3004, Idaho Code, and to the extent not already included in federal adjusted gross income:

(a) Alimony;

(b) Support money;

(c) Nontaxable strike benefits;

(d) The nontaxable amount of any individual retirement account, pension or annuity, (including railroad retirement benefits, all payments received under the federal social security act except the social security death benefit as specified in this subsection, state unemployment insurance laws, and veterans disability pensions and compensation, excluding any return of principal paid by the recipient of an annuity and excluding rollovers as provided in section 402 or 403 of the Internal Revenue Code);

(e) Nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities;

(f) Worker's compensation; and

(g) The gross amount of loss of earnings insurance.

It does not include gifts from nongovernmental sources or inheritances. To the extent not reimbursed, the cost of medical care as defined in section 213(d) of the Internal Revenue Code, incurred or paid by the claimant and,

if married, the claimant's spouse, may be deducted from income. To the extent not reimbursed, personal funeral expenses, including prepaid funeral expenses and premiums on funeral insurance, of the claimant and claimant's spouse only, may be deducted from income up to an annual maximum of five thousand dollars (\$5,000) per claim. "Income" does not include veterans disability pensions received by a person described in subsection (1)(e) who is a claimant or a claimant's spouse if the disability pension is received pursuant to a service-connected disability of a degree of forty percent (40%) or more. "Income" does not include dependency and indemnity compensation or death benefits paid to a person described in subsection (1) of this section by the United States department of veterans affairs and arising from a service-connected death or disability. "Income" does not include lump sum death benefits made by the social security administration pursuant to 42 U.S.C. section 402(i). Documentation of medical expenses may be required by the county assessor and state tax commission in such form as the county assessor or state tax commission shall determine. "Income" shall be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant and/or the claimant's spouse does not file a federal tax return, the claimant's and/or the claimant's spouse's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gross income had the claimant and/or the claimant's spouse filed a federal tax return, as determined by the county assessor. The county assessor or state tax commission may require documentation of income in such form as each shall determine, including, but not limited to: copies of federal or state tax returns and any attachments thereto; and income reporting forms such as the W-2 and 1099.

For determining income for certain married individuals living apart, the provisions of sections 2(c) and 7703(b) of the Internal Revenue Code shall apply.

(6) "Occupied" means actual use and possession.

(7) "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate or who is a person entitled to file a claim under section 63-702, Idaho Code. "Owner" shall also include any person who:

(a) Is the beneficiary of a revocable or irrevocable trust which is the owner of such homestead and under which the claimant or the claimant's spouse has the primary right of occupancy of the homestead; or

(b) Is a partner of a limited partnership, member of a limited liability company or shareholder of a corporation if such entity holds title in fee simple or holds a certificate of motor vehicle title and if the person holds at least a five percent (5%) ownership in such entity, as determined by the county assessor; or

(c) Has retained or been granted a life estate.

"Owner" includes a vendee in possession under a land sale contract. Any partial ownership shall be considered as ownership for determining initial qualification for property tax reduction benefits; however, the amount of property tax reduction under section 63-704, Idaho Code, and rules promul-

gated pursuant to section 63-705, Idaho Code, shall be computed on the value of the claimant's partial ownership. "Partial ownership," for the purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person or where the homestead is held by an entity, as set forth in this subsection, but more than one (1) person has the right of occupancy of such homestead. A person holding either partial title in fee simple or holding a certificate of motor vehicle title together with another person but who does not occupy the dwelling as his primary dwelling place, shall not be considered an owner for purposes of this section, if such person is a cosignatory of a note secured by the dwelling in question and at least one (1) of the other cosignatories of the note occupies the dwelling as his primary dwelling place. The combined community property interests of both spouses shall not be considered partial ownership so long as the combined community property interests constitute the entire ownership of the homestead, including where the spouses are occupying a homestead owned by an entity, as set forth in this subsection, and the spouses have the primary right of occupancy of the homestead. The proportional reduction required under this subsection shall not apply to community property interests. Where title to property was held by a person who has died without timely filing a claim for property tax reduction, the estate of the deceased person shall be the "owner," provided that the time periods during which the deceased person held such title shall be attributed to the estate for the computation of any time periods under subsection (8)(a) or (8)(b) of this section.

(8)(a) "Primary dwelling place" means the claimant's dwelling place on January 1 or before April 15 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates to be his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 or before April 15 and:

- (i) At least six (6) months during the prior year; or
- (ii) The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or
- (iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant for less than one (1) year. The county assessor may require written or other proof of the foregoing in such form as the county assessor may determine.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration to occupy the dwelling. Payment of utilities shall not be payment of a consideration to occupy the dwelling. A claimant's spouse who resides in a care facility shall be deemed to reside at the

claimant's primary dwelling place and to be a part of the claimant's household. A care facility is a hospital, nursing facility or intermediate care facility for people with intellectual disabilities as defined in section 39-1301, Idaho Code, or a facility as defined in section 39-3302(14), Idaho Code, or a dwelling other than the one upon which the applicant makes application where a claimant who is unable to reside in the dwelling upon which the application is made lives and receives help in daily living, protection and security.

History.

I.C., § 63-701, as added by 1996, ch. 98, § 8, p. 362; am. 1997, ch. 24, § 1, p. 33; am. 1997, ch. 117, § 23, p. 323; am. 1998, ch. 352, § 1, p. 1108; am. 1999, ch. 40, § 1, p. 77; am. 1999, ch. 382, § 2, p. 1047; am. 2000, ch. 20, § 1, p. 38; am. 2000, ch. 109, § 1, p. 239; am. 2000, ch. 154, § 1, p. 389; am. 2000, ch. 274,

§ 149, p. 799; am. 2001, ch. 69, § 2, p. 129; am. 2001, ch. 325, § 1, p. 1140; am. 2004, ch. 156, § 2, p. 495; am. 2005, ch. 31, § 1, p. 143; am. 2005, ch. 241, § 1, p. 749; am. 2005, ch. 280, § 58, p. 880; am. 2006, ch. 350, § 2, p. 1065; am. 2008, ch. 117, § 1, p. 323; am. 2010, ch. 235, § 55, p. 542; am. 2011, ch. 85, § 1, p. 176.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 117, added the last paragraph in subsection (5).

The 2010 amendment, by ch. 235, substituted "people with intellectual disabilities" for "the mentally retarded" in the last sentence in paragraph (8)(b).

The 2011 amendment, by ch. 85, in the first undesignated paragraph following paragraph

(5)(g), deleted "board of equalization" following "county assessor", twice in the seventh sentence and once in the last sentence.

Federal References.

Sections 2(c) and 7703(b) of the Internal Revenue Code, referred to in the last paragraph of subsection (5), are codified as 26 U.S.C.S. §§ 2(c) and 7703(b).

JUDICIAL DECISIONS

Cited in: *Bradbury v. Idaho Judicial Council*, 149 Idaho 107, 233 P.3d 38 (2009).

63-706. Time requirements for filing claim. — Any claim for property tax reduction to be granted under the provisions of sections 63-701 through 63-710, Idaho Code, shall be filed in the office of the county assessor between January 1 and April 15 of each year. If April 15 is a weekend or a certain holiday recognized by the internal revenue service, such claims shall be considered timely filed if filed on the next business day.

History.

I.C., § 63-706, as added by 1996, ch. 98, § 8, p. 308; am. 1997, ch. 117, § 28, p. 298;

am. 2001, ch. 69, § 6, p. 129; am. 2011, ch. 85, § 2, p. 176; am. 2013, ch. 21, § 5, p. 36.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 85, rewrote the section to the extent that a detailed comparison is impracticable.

The 2013 amendment, by ch. 21, added the last sentence.

63-707. Procedure after claim approval. — (1) The county assessor shall prepare a property tax reduction roll, which shall be in addition to the

property roll, the subsequent property roll and missed property rolls which property tax reduction roll shall show:

- (a) The name of the taxpayer;
- (b) The description of the property for which a reduction in property taxes is claimed, suitably detailed to meet the requirements of the individual county;
- (c) The assessor's best estimate of current market value, and any pro-rated net taxable value of the eligible portion of the property's current market value for assessment purposes; and
- (d) The amount of tax reduction for which the applicant is eligible as determined by the income of the claimant and, if married, the claimant's spouse, pursuant to sections 63-704 and 63-705, Idaho Code.

(2) As soon as possible, but in any event by no later than June 1, the property tax reduction roll shall be certified to the county auditor and to the state tax commission in the manner prescribed by rules promulgated by the state tax commission. The property tax reduction roll shall be accompanied by a copy of the claim forms.

(3)(a) As soon as possible, but in any event by no later than the fourth Monday of October, the county auditor shall complete the property tax reduction roll by adding the following information:

- (i) The current year's levy for the code area in which the property is situated;
- (ii) The amount of property tax reduction claimed based on the current year's market value for assessment purposes and the current year's levy; and
- (iii) The current year's market value for assessment purposes.

(b) As soon as possible, but in any event no later than the fourth Monday of October, the county auditor shall certify the completed property tax reduction roll to the state tax commission in the manner prescribed by rules promulgated by the state tax commission.

(4) The state tax commission shall determine the total number of claims to be allowed in each county, the dollar amount of each claim allowed, and the total dollar amount for all claims for each county. These amounts shall be certified to the county auditor and tax collector by the state tax commission by no later than the third Monday in November.

(5) The state tax commission may audit each and every claim submitted to it, and, any other provision of law notwithstanding, may utilize income tax returns filed by the claimant or by the claimant's spouse to determine the income of the claimant or the claimant's spouse.

(6) If it is determined by the state tax commission that a claim is erroneous, the tax commission shall disapprove so much of the claim as necessary in order to conform with statutory standards. The tax commission shall provide the claimant, or the person or entity acting on behalf of the claimant, written notice of the tax commission's intent to disapprove all or a portion of the claim. The claimant, or the person or entity acting on behalf of the claimant, shall have twenty-eight (28) days to make written protest to the tax commission of the intended action. The claimant, or the person or entity acting on behalf of the claimant, may submit additional information

and may request an informal hearing with the commission. If the claimant, or the person or entity acting on behalf of the claimant, fails to make written protest within twenty-eight (28) days, the tax commission shall provide written notice of disapproval to the claimant, or the person or entity acting on behalf of the claimant, by the second Monday of October and to the county auditor of the county from which the claim was received. Any claimant, or person or entity acting on behalf of the claimant, whose claim is disapproved in whole or in part by the state tax commission may:

- (a) File a claim with the county commissioners for a special cancellation pursuant to section 63-711, Idaho Code;
- (b) Appeal such disapproval by the state tax commission to the board of tax appeals or to the district court of the county of residence of the taxpayer within thirty (30) days.

History.

I.C., § 63-707, as added by 1996, ch. 98, § 8, p. 308; am. 2001, ch. 69, § 7, p. 129; am.

2004, ch. 156, § 5, p. 495; am. 2011, ch. 85, § 3, p. 176.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 85, deleted “Immediately after claims have been approved by the board of equalization” from the beginning of the introductory paragraph of subsection (1); in subsection (2), substituted “no later than June 1” for “no later than the fourth Monday of June” in the first sentence and deleted “for disapproved claims, when

requested by the state tax commission and a copy of the approved claims form” from the end of the last sentence; in the introductory paragraph in subsection (6), substituted “twenty-eight (28) days” for “fourteen (14) days” in the third and fifth sentences and substituted “second Monday of October” for “fourth Monday of October” near the end of the fifth sentence.

63-713. Definitions. — In addition to the definitions in section 63-701, Idaho Code, the following definitions apply to sections 63-712 through 63-721, Idaho Code.

(1) “Qualified claimant” means:

(a) An individual who is a claimant who applies for and properly receives property tax relief under the provisions of sections 63-701 through 63-710, Idaho Code; or

(b) An individual who meets the definition of “claimant” under section 63-701, Idaho Code, and is otherwise eligible to file a claim under sections 63-701 through 63-710, Idaho Code, except by reason of exceeding the income limitations of section 63-705, Idaho Code, may nevertheless be a qualified claimant, provided his household income does not exceed forty thousand dollars (\$40,000) for the tax year 2007, which amount shall be increased by the annual cost-of-living percentage modification as determined by the secretary of health and human services pursuant to 42 U.S.C. section 415(i) beginning in 2009.

(2) “Qualified property” means property owned by a qualified claimant, provided that the property is the “homestead,” as defined in section 63-701, Idaho Code, of the qualified claimant, is owned only by the qualified claimant and his or her spouse and is not subject to a trust or life estate or other ownership held by a person who is not the qualified claimant or his or her spouse.

(3) "Sufficient equity" means that:

(a) The property is not security for a reverse mortgage, a home equity loan or line of credit, or any similar loan or encumbrance; and

(b) The amount of all encumbrances of any nature on the property that are superior to any liens for deferral, plus the amount of property tax and interest previously deferred on the same property, does not exceed eighty percent (80%) of the current year's market value for assessment purposes.

History.

I.C., § 63-713, as added by 2006, ch. 234,

§ 1, p. 694; am. 2008, ch. 214, § 1, p. 670; am. 2013, ch. 22, § 1, p. 42.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 214, subdivided subsection (1); added paragraph (1)(b); and rewrote subsection (2), which formerly read: "Qualified property" means property for which: (a) A qualified claimant is eligible to receive benefits under the provisions of sections 63-701 through 63-710, Idaho Code, for the year for which the qualified claimant applies for a deferral of payment of property tax; and (b) Is owned only by the qualified claimant and his or her spouse and is not

subject to a trust or life estate or other ownership held by a person who is not the qualified claimant or his or her spouse."

The 2013 amendment, by ch. 22, added subsection (3).

Effective Dates.

Section 5 of S.L. 2013, ch. 22 declared an emergency and made this section retroactive to January 1, 2013. Approved February 26, 2013.

63-714. Application — Deferral of property tax. — (1) A qualified claimant, as defined in section 63-713(1)(a), Idaho Code, may elect, upon the application for property tax relief filed under section 63-703, Idaho Code, to defer payment of any property tax due after application of all benefits available under section 63-704, Idaho Code. A qualified claimant, as defined in section 63-713(1)(b), Idaho Code, may apply for property tax deferral under sections 63-712 through 63-721, Idaho Code. The state tax commission shall prescribe the form and manner by which the election must be made and may require that the application include information establishing the outstanding balance of any encumbrances, proof of insurance of an amount adequate for the amount of deferred tax and interest, and such other information as the state tax commission reasonably determines to be necessary. The state tax commission may require written or other proof of the encumbrances or casualty insurance in such form as the state tax commission may determine.

(2) No application for deferral of property taxes shall be granted if:

(a) The application fails to show sufficient equity in that property; or

(b) The application fails to show proof of insurance of an amount adequate for the amount of the deferred tax and interest.

History.

I.C., § 63-714, as added by 2006, ch. 234,

§ 1, p. 694; am. 2008, ch. 214, § 2, p. 670; am. 2013, ch. 22, § 2, p. 42.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 214, in the

introductory paragraph in subsection (1), in the first sentence, inserted "as defined in

section 63-713(1)(a), Idaho Code”, and added the second sentence.

The 2013 amendment, by ch. 22, in subsection (2) deleted “after consideration of encumbrances that are superior to any liens for deferral to secure the payment of all existing deferrals granted in the property” from the end of paragraph (a) and deleted paragraph (c), which formerly read: “The result would be to defer property taxes which, together with the amount of property tax and interest pre-

viously deferred on the same property, would exceed fifty percent (50%) of the qualified claimant’s proportional share of the market value of the qualified property.”

Effective Dates.

Section 5 of S.L. 2013, ch. 22 declared an emergency and made this section retroactive to January 1, 2013. Approved February 26, 2013.

63-715. Procedures — Appeals. — Elections for deferral of payment of property tax shall be subject to the provisions of section 63-706, Idaho Code, and shall be included on the property tax reduction roll and processed and reviewed as provided in section 63-707, Idaho Code, for claims for property tax relief.

History.

I.C., § 63-715, as added by 2006, ch. 234, § 1, p. 694; am. 2011, ch. 85, § 4, p. 176.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 85, deleted “if approved by the county board of equalization”

following “section 63-706, Idaho Code, and” near the middle of the section.

63-716. Deferral — Interest — Lien — Priority. — (1) Upon approval by the state tax commission, payment of any amount of property tax due for the year to which the election relates, after application of the property tax relief available under sections 63-701 through 63-710, Idaho Code, and subject to the limitation in section 63-717(2), Idaho Code, in regard to the qualified property subject to the election, shall be deferred until the deferral is terminated under section 63-718, Idaho Code.

(2) During the period of deferral, interest shall accrue on the amount deferred at the annual rate of six percent (6%) annually.

(3) The lien imposed by section 63-206, Idaho Code, shall continue to be a lien on the property in the amount of deferred taxes and interest thereon. The state tax commission shall file with the county recorder of the county in which the property is located a notice of lien for deferred property taxes. Notwithstanding the provisions of section 63-206, Idaho Code, the lien for deferred taxes and interest shall not be a first and prior lien, but shall take its priority from the date and time of filing of the notice of lien.

History.

I.C., § 63-716, as added by 2006, ch. 234, § 1, p. 694; am. 2011, ch. 85, § 5, p. 176.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 85, deleted

“both the county board of equalization and” following “Upon approval by” at the beginning

of subsection (1).

63-718. Events terminating deferral — Payment of deferred tax and interest. — (1) A deferral of property tax payments shall terminate on the earlier of:

- (a) Voluntary payment of the full amount of deferred tax and interest to the state tax commission;
- (b) The death of the qualified claimant or if there is more than one (1) qualified claimant, the death of the last surviving qualified claimant;
- (c) A sale or other transfer of title to the property or any part of the property except a transfer of title to a surviving spouse of a deceased qualified claimant;
- (d) The property no longer qualifies for the exemption provided in section 63-602G, Idaho Code, for residential improvements;
- (e) A determination by the state tax commission under section 63-720, Idaho Code, that the deferral of property tax payments was erroneously granted to a person who is not a qualified claimant or in regard to property that is not qualified property.

(2) When a deferral of property tax is terminated any unpaid amount of deferred tax and interest shall be paid to the state tax commission no later than one hundred eighty (180) days after the termination.

(3) Any payments of deferred property tax received by the state tax commission under this section or under sections 63-719 and 63-720, Idaho Code, shall be distributed to the property tax deferral recovery fund which is hereby created. Amounts in the property tax deferral recovery fund are hereby continuously appropriated for the purposes of section 63-3638(5), Idaho Code.

History.

I.C., § 63-718, as added by 2006, ch. 234, § 1, p. 694; am. 2013, ch. 22, § 3, p. 42.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 22, in subsection (1), rewrote paragraph (b), which formerly read: "The death of the qualified claimant. In the case of more than one (1) qualified claimant, the death of the last surviving qualified claimant."

Effective Dates.

Section 5 of S.L. 2013, ch. 22 declared an emergency and made this section retroactive to January 1, 2013. Approved February 26, 2013.

63-720. Recovery of erroneous and other improper deferrals. —

(1) In addition to the provisions of section 63-719, Idaho Code, the state tax commission may recover deferrals of tax payments made under sections 63-712 through 63-721, Idaho Code, from any person who elected the deferral under section 63-714, Idaho Code, if the commission determines that:

- (a) A deferral was granted to a person who is not a qualified claimant or in regard to property that is not qualified property; or

(b) The owner of the property subject to the deferral does not possess sufficient equity in that property.

(2) The deficiency determination, collection, and enforcement procedures provided by the Idaho income tax act, sections 63-3039, 63-3042, 63-3043 through 63-3064, Idaho Code, shall apply and be available to the commission for enforcement and collection under sections 63-712 through 63-721, Idaho Code, and such sections shall, for this purpose, be considered part of sections 63-712 through 63-721, Idaho Code. Wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under sections 63-712 through 63-721, Idaho Code, be described as tax deferral liens and proceedings. In connection with such sections, a deficiency shall consist of any amount subject to recovery under this section together with any interest and penalty due thereon.

History.

I.C., § 63-720, as added by 2006, ch. 234,
§ 1, p. 694; am. 2013, ch. 22, § 4, p. 42.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 22, in subsection (1), rewrote paragraph (b), which formerly read: "The owner of the property subject to the deferral possesses insufficient equity in that property, after consideration of encumbrances that are superior to any liens for deferral, to secure the payment of all existing deferrals granted in the property."

Effective Dates.

Section 5 of S.L. 2013, ch. 22 declared an emergency and made this section retroactive to January 1, 2013. Approved February 26, 2013.

CHAPTER 8

LEVY AND APPORTIONMENT OF TAXES

SECTION.

- 63-802. Limitation on budget requests —
Limitation on tax charges —
Exceptions. [Effective until
July 1, 2017.]
- 63-802. Limitation on budget requests —
Limitation on tax charges —
Exceptions. [Effective July 1,
2017.]
- 63-802C. Election to create a new taxing district.
- 63-803. Certification of budgets in dollars.

SECTION.

- [Effective until January 1,
2017.]
- 63-803. Certification of budgets in dollars.
[Effective January 1, 2017.]
- 63-810. Erroneous levy — Corrective action.
- 63-811. Computation of property taxes —
Duty of county auditor. [Effective
until July 1, 2017.]
- 63-811. Computation of property taxes —
Duty of county auditor. [Effective
July 1, 2017.]

63-802. Limitation on budget requests — Limitation on tax charges — Exceptions. [Effective until July 1, 2017.] — (1) Except as provided in subsections (3) and (4) of this section, no taxing district shall certify a budget request for an amount of property tax revenues to finance an annual budget that exceeds the greater of paragraphs (a) through (i) of this subsection inclusive:

(a) The dollar amount of property taxes certified for its annual budget for

any one (1) of the three (3) tax years preceding the current tax year, whichever is greater, for the past tax year, which amount may be increased by a growth factor of not to exceed three percent (3%) plus the amount of revenue calculated as described in this subsection. Multiply the levy of the previous year, not including any levy described in subsection (4) of this section, or any school district levy reduction resulting from a distribution of state funds pursuant to section 63-3638(11), Idaho Code, by the value shown on the new construction roll compiled pursuant to section 63-301A, Idaho Code; and by the value of annexation during the previous calendar year, as certified by the state tax commission for market values of operating property of public utilities and by the county assessor;

(b) The dollar amount of property taxes certified for its annual budget during the last year in which a levy was made;

(c) The dollar amount of the actual budget request, if the taxing district is newly created except as may be provided in subsection (1)(h) of this section;

(d) In the case of school districts, the restriction imposed in section 33-802, Idaho Code;

(e) In the case of a nonschool district for which less than the maximum allowable increase in the dollar amount of property taxes is certified for annual budget purposes in any one (1) year, such a district may, in any following year, recover the foregone increase by certifying, in addition to any increase otherwise allowed, an amount not to exceed one hundred percent (100%) of the increase originally foregone. Said additional amount shall be included in future calculations for increases as allowed;

(f) In the case of cities, if the immediately preceding year's levy subject to the limitation provided by this section, is less than 0.004, the city may increase its budget by an amount not to exceed the difference between 0.004 and actual prior year's levy multiplied by the prior year's market value for assessment purposes. The additional amount must be approved by sixty percent (60%) of the voters voting on the question at an election called for that purpose and held on the date in May or November provided by law, and may be included in the annual budget of the city for purposes of this section;

(g) A taxing district may submit to the electors within the district the question of whether the budget from property tax revenues may be increased beyond the amount authorized in this section, but not beyond the levy authorized by statute. The additional amount must be approved by sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) or more of the voters voting on the question at an election called for that purpose and held on the May or November dates provided by section 34-106, Idaho Code. If approved by the required minimum sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) of the voters voting at the election, the new budget amount shall be the base budget for the purposes of this section;

(h) When a nonschool district consolidates with another nonschool district or dissolves and a new district performing similar governmental functions as the dissolved district forms with the same boundaries within three (3) years, the maximum amount of a budget of the district from

property tax revenues shall not be greater than the sum of the amounts that would have been authorized by this section for the district itself or for the districts that were consolidated or dissolved and incorporated into a new district;

(i) In the instance or case of cooperative service agencies, the restrictions imposed in sections 33-315 through 33-318, Idaho Code.

(2) In the case of fire districts, during the year immediately following the election of a public utility or public utilities to consent to be provided fire protection pursuant to section 31-1425, Idaho Code, the maximum amount of property tax revenues permitted in subsection (1) of this section may be increased by an amount equal to the current year's taxable value of the consenting public utility or public utilities multiplied by that portion of the prior year's levy subject to the limitation provided by subsection (1) of this section.

(3) No board of county commissioners shall set a levy, nor shall the state tax commission approve a levy for annual budget purposes which exceeds the limitation imposed in subsection (1) of this section, unless authority to exceed such limitation has been approved by a majority of the taxing district's electors voting on the question at an election called for that purpose and held pursuant to section 34-106, Idaho Code, provided however, that such voter approval shall be for a period of not to exceed two (2) years.

(4) The amount of property tax revenues to finance an annual budget does not include revenues from nonproperty tax sources, and does not include revenue from levies to satisfy judgments pursuant to section 63-1305A, Idaho Code, and revenue from levies that are voter approved for bonds, override levies or supplemental levies, plant facilities reserve fund levies, school emergency fund levies or for levies applicable to newly annexed property or for levies applicable to new construction as evidenced by the value of property subject to the occupancy tax pursuant to section 63-317, Idaho Code, for the preceding tax year.

History.

I.C., § 63-802, as added by 1996, ch. 98, § 9, p. 308; am. 1997, ch. 97, § 1, p. 227; am. 1997, ch. 117, § 32, p. 298; am. 1998, ch. 407, § 1, p. 1263; am. 1999, ch. 260, § 1, p. 665; am. 1999, ch. 381, § 1, p. 1045; am. 2000, ch.

444, § 1, p. 1407; am. 2005, ch. 178, § 1, p. 549; am. 2006, ch. 318, § 39, p. 990; am. 2007, ch. 144, § 2, p. 419; am. 2008, ch. 400, § 8, p. 1102; am. 2009, ch. 42, § 2, p. 119; am. 2009, ch. 341, § 142, p. 993; am. 2010, ch. 283, § 3, p. 760; am. 2012, ch. 339, § 4, p. 934.

STATUTORY NOTES

Repealed effective July 1, 2017. This section is repealed effective July 1, 2017, pursuant to S.L. 2012, ch. 339, § 9, at which time a new version of this section will come into effect. For this section as effective July 1, 2017, see the following section, also numbered § 63-802.

Amendments.

The 2008 amendment, by ch. 400, inserted "plus the dollar amount of moneys received pursuant to section 63-3638(12), Idaho Code, for the past tax year" in paragraph (1)(a).

This section was amended by two 2009 acts

which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 42, near the beginning in subsection (1)(a), deleted "plus the dollar amount of moneys received pursuant to section 63-3638(12), Idaho Code" following "whichever is greater."

The 2009 amendment, by ch. 341, updated the section references in subsection (1)(a).

The 2010 amendment, by ch. 283, § 3, in the introductory paragraph in subsection (1), deleted "for tax year 1995, and each year thereafter" following "subsection (3) of this

section” and added “paragraphs (a) through (i) of this subsection inclusive”; and in paragraph (1)(a), substituted “amount of revenue calculated as described in this subsection. Multiply the levy” for “amount of revenue that would have been generated by applying the levy” and in the last sentence, deleted “to any increase in market value subject to taxation resulting from new construction or change of land use classification as evidenced” following “section 63-3638(11), Idaho Code.”

The 2012 amendment, by ch. 339, substituted “subsections (3) and (4)” for “subsection (3)” in the introductory paragraph and inserted “to satisfy judgments pursuant to section 63-1305A, Idaho Code, and revenue from levies” near the middle of subsection (4).

Compiler’s Notes.

Section 9 of S.L. 2008, ch. 400 provided “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Section 16 of S.L. 2012, ch. 339 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates.

Section 10 of S.L. 2008, ch. 400 provided that the act should take effect on and after January 1, 2009.

Section 4 of S.L. 2009, ch. 42 declared an emergency retroactively to January 1, 2009. Approved March 23, 2009.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 4 of S.L. 2010, ch. 283 provided that § 3 of the act should take effect January 1, 2011.

Section 17 of S.L. 2012, ch. 339 declared an emergency and made this section retroactive to January 1, 2012. Approved April 5, 2012.

63-802. Limitation on budget requests — Limitation on tax charges — Exceptions. [Effective July 1, 2017.] — (1) Except as provided in subsection (3) of this section, no taxing district shall certify a budget request for an amount of property tax revenues to finance an annual budget that exceeds the greater of paragraphs (a) through (i) of this subsection inclusive:

- (a) The dollar amount of property taxes certified for its annual budget for any one (1) of the three (3) tax years preceding the current tax year, whichever is greater, for the past tax year, which amount may be increased by a growth factor of not to exceed three percent (3%) plus the amount of revenue calculated as described in this subsection. Multiply the levy of the previous year, not including any levy described in subsection (4) of this section, or any school district levy reduction resulting from a distribution of state funds pursuant to section 63-3638(11), Idaho Code, by the value shown on the new construction roll compiled pursuant to section 63-301A, Idaho Code; and by the value of annexation during the previous calendar year, as certified by the state tax commission for market values of operating property of public utilities and by the county assessor;
- (b) The dollar amount of property taxes certified for its annual budget during the last year in which a levy was made;
- (c) The dollar amount of the actual budget request, if the taxing district is newly created except as may be provided in subsection (1)(h) of this section;
- (d) In the case of school districts, the restriction imposed in section 33-802, Idaho Code;
- (e) In the case of a nonschool district for which less than the maximum allowable increase in the dollar amount of property taxes is certified for annual budget purposes in any one (1) year, such a district may, in any

following year, recover the foregone increase by certifying, in addition to any increase otherwise allowed, an amount not to exceed one hundred percent (100%) of the increase originally foregone. Said additional amount shall be included in future calculations for increases as allowed;

(f) In the case of cities, if the immediately preceding year's levy subject to the limitation provided by this section, is less than 0.004, the city may increase its budget by an amount not to exceed the difference between 0.004 and actual prior year's levy multiplied by the prior year's market value for assessment purposes. The additional amount must be approved by sixty percent (60%) of the voters voting on the question at an election called for that purpose and held on the date in May or November provided by law, and may be included in the annual budget of the city for purposes of this section;

(g) A taxing district may submit to the electors within the district the question of whether the budget from property tax revenues may be increased beyond the amount authorized in this section, but not beyond the levy authorized by statute. The additional amount must be approved by sixty-six and two-thirds percent (66 2/3%) or more of the voters voting on the question at an election called for that purpose and held on the May or November dates provided by section 34-106, Idaho Code. If approved by the required minimum sixty-six and two-thirds percent (66 2/3%) of the voters voting at the election, the new budget amount shall be the base budget for the purposes of this section;

(h) When a nonschool district consolidates with another nonschool district or dissolves and a new district performing similar governmental functions as the dissolved district forms with the same boundaries within three (3) years, the maximum amount of a budget of the district from property tax revenues shall not be greater than the sum of the amounts that would have been authorized by this section for the district itself or for the districts that were consolidated or dissolved and incorporated into a new district;

(i) In the instance or case of cooperative service agencies, the restrictions imposed in sections 33-315 through 33-318, Idaho Code.

(2) In the case of fire districts, during the year immediately following the election of a public utility or public utilities to consent to be provided fire protection pursuant to section 31-1425, Idaho Code, the maximum amount of property tax revenues permitted in subsection (1) of this section may be increased by an amount equal to the current year's taxable value of the consenting public utility or public utilities multiplied by that portion of the prior year's levy subject to the limitation provided by subsection (1) of this section.

(3) No board of county commissioners shall set a levy, nor shall the state tax commission approve a levy for annual budget purposes which exceeds the limitation imposed in subsection (1) of this section, unless authority to exceed such limitation has been approved by a majority of the taxing district's electors voting on the question at an election called for that purpose and held pursuant to section 34-106, Idaho Code, provided however, that such voter approval shall be for a period of not to exceed two (2) years.

(4) The amount of property tax revenues to finance an annual budget does not include revenues from nonproperty tax sources, and does not include revenue from levies that are voter approved for bonds, override levies or supplemental levies, plant facilities reserve fund levies, school emergency fund levies or for levies applicable to newly annexed property or for levies applicable to new construction as evidenced by the value of property subject to the occupancy tax pursuant to section 63-317, Idaho Code, for the preceding tax year.

History.

I.C., § 63-802, as added by 2012, ch. 339,
§ 12, p. 934.

STATUTORY NOTES**Compiler's Notes.**

For this section as effective until July 1, 2017, see the preceding section, also numbered § 63-802.

Section 16 of S.L. 2012, ch. 339 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is

declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 17 of S.L. 2012, ch. 339 makes the enactment of this section effective July 1, 2017.

63-802C. Election to create a new taxing district. — (1) In the case of an election to create a new taxing district, the county clerk, of the county or counties where the proposed taxing district is proposed to be located, shall mail a notice of the election to all residences within the proposed taxing district or to residents in the proposed taxing district who are eligible to vote in this election. The notice shall be mailed not less than fourteen (14) calendar days prior to the day of the election and shall state with specificity: the purpose of the election, the date of the election, which shall be on a date authorized in section 34-106, Idaho Code, the polling places, the time the polls will be open, the aggregate amount of taxes that will be raised in the proposed taxing district if the election is successful and the increase that will occur per one hundred thousand dollars (\$100,000) of taxable value of property, above any exemptions, of residential property, commercial property, industrial property, land actively devoted to agriculture and operating property.

(2) The county clerk shall, within ten (10) days after the filing of the petition to create the new taxing district, estimate the cost of advertising and holding the election provided in this section and notify in writing the person or any of the persons filing the petition as to the amount of the estimate. The person or persons shall within twenty (20) days after receipt of the written notice deposit the estimated amount with the county clerk in cash, or the petition shall be deemed withdrawn. If the deposit is made and the proposed new taxing district is formed, the person or persons so depositing the sum shall be reimbursed from the first moneys collected by the county from the taxes authorized to be levied by this section.

(3) Compliance with this section shall satisfy any notice or publication requirement as may be provided by law.

History.

I.C., § 63-802C, as added by 2007, ch. 364, § 1, p. 1097; am. 2009, ch. 341, § 143, p. 993.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 341, added the subsection (1) designation, and therein, in the second sentence, inserted “which shall be on a date authorized in section 34-106, Idaho Code”; added the subsection (2) designation, and rewrote the subsection, which formerly read: “The county clerk may bill the proposed

taxing district for reimbursement of costs of administering this section”; and added the subsection (3) designation.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

63-803. Certification of budgets in dollars. [Effective until January 1, 2017.] — (1) Whenever any taxing district is required by law to certify to any county treasurer, county auditor, county assessor, county commissioners or to any other county officer, any property tax levy, upon property located within said district, such certification shall, notwithstanding any other provision of the law applicable to any such district, be made at the time and in the manner hereinafter provided.

(2) The county auditor shall inform each of the taxing districts within his county of the taxable value of that district as soon as such value is known to the auditor, whether the value comes from the appraisal and assessment of real and personal property, or from allocation of the taxable value of operating property, or from other sources.

(3) Using the taxable value of the district, the council, trustees, board or other governing body of any taxing district shall certify the total amount required from a property tax upon property within the district to raise the amount of money fixed by their budget as previously prepared or approved. The amount of money so determined shall be certified in dollars to the appropriate county commissioners. Any taxing unit, except regional airport authorities, located in more than one (1) county shall divide its dollar budget for certification to the separate counties by multiplying the amount of such budget by a fraction, the numerator of which shall be the total taxable value of all property in such taxing unit within the county to which such certification is to be made, and the denominator of which shall be the total taxable value of property in such taxing unit in all such counties. Budget certification to the participating counties of regional airport authorities shall be made in the manner prescribed in section 21-807(10), Idaho Code. Taxable value shall be certified by the county auditor of each affected county to such taxing unit and such certification shall be used in this formula. Except as provided in section 33-805, Idaho Code, relating to school emergency fund levies, the certification to the county commissioners required in this section shall be made not later than the Thursday prior to the second Monday in September, unless, upon application therefor, the county commissioners grant an extension of not more than seven (7) working days. After receipt of this certification, the county commissioners shall make a tax levy as a percent of taxable value of all property in the taxing district which, when applied to the tax rolls, will meet the budget requirements certified by such taxing districts.

(4) Except as provided in subsection (1)(a) through (f) of section 50-2908, Idaho Code, for the purpose of this section, “taxable value” shall mean the portion of the equalized assessed value, less any exemptions, and the value that exceeds the value of the base assessment roll for the portion of any taxing district within a revenue allocation area of an urban renewal district, located within each taxing district which certifies a budget to be raised from a property tax levy. When the county auditor is notified of revenues sufficient to cover expenses as provided in section 50-2903(5), Idaho Code, taxable value shall also include the value that exceeds the value of the base assessment roll for the portion of any taxing district within a revenue allocation area. For each taxing district, taxable value shall include the value from the property and operating property rolls for the current year and subsequent and missed property rolls for the prior year or the best estimate of the subsequent and missed property rolls for the current year.

History.

I.C., § 63-803, as added by 1996, ch. 98, § 9, p. 308; am. 2002, ch. 118, § 1, p. 333; am. 2002, ch. 143, § 7, p. 394; am. 2003, ch. 8, § 4, p. 14; am. 2008, ch. 253, § 2, p. 742; am. 2009,

ch. 42, § 3, p. 119; am. 2012, ch. 339, § 5, p. 934; am. 2013, ch. 243, § 2, p. 581; am. 2014, ch. 37, § 1, p. 63; am. 2014, ch. 357, § 5, p. 886.

STATUTORY NOTES

Repealed effective January 1, 2017.

This section was to be repealed effective July 1, 2017, pursuant to S.L. 2012, ch. 339, § 9, at which time a new version of this section, enacted by S.L. 2012, ch. 339, § 13 and amended by S.L. 2013, ch. 243, § 3, was to come into effect. Section 2 of S.L. 2014, ch. 37 amended the new version of this section, effective January 1, 2017. For this section as effective January 1, 2017, see the following section, also numbered § 63-803.

Amendments.

The 2008 amendment, by ch. 253, added the exception in the beginning in subsection (4).

The 2009 amendment, by ch. 42, inserted “except the exemption for personal property in section 63-602KK, Idaho Code” in the first sentence in subsection (4).

The 2012 amendment, by ch. 339, updated the reference near the beginning of subsection (4) in light of the 2012 amendment of section 50-2908.

The 2013 amendment, by ch. 243, § 2, updated a reference in subsection (4) in light of the 2013 amendment of § 63-602KK.

This section was amended by two 2014 acts which appear to be compatible and have been compiled together.

The 2014 amendment, by ch. 37, § 1, deleted “except the exemption for personal property in section 63-602KK(2), Idaho Code” following “less any exemptions” in the first sentence of subsection (4).

The 2014 amendment, by ch. 357, § 5, deleted “except the exemption for personal

property in section 63-602KK(2), Idaho Code” following “less any exemptions” near the middle of the first sentence in subsection (4).

Compiler's Notes.

Section 16 of S.L. 2012, ch. 339 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

S.L. 2014. Chapter 357 became law without the signature of the governor.

Effective Dates.

Section 4 of S.L. 2008, ch. 253 declared an emergency retroactively to January 1, 2008. Approved March 25, 2008.

Section 4 of S.L. 2009, ch. 42 declared an emergency retroactively to January 1, 2009. Approved March 23, 2009.

Section 17 of S.L. 2012, ch. 339 declared an emergency and made this section retroactive to January 1, 2012. Approved April 5, 2012.

Section 5 of S.L. 2013, ch. 243 declared an emergency and made this section retroactive to January 1, 2013. Approved April 3, 2013.

Section 3 of S.L. 2014, ch. 37, declared an emergency and made this section retroactive to January 1, 2014.

Section 8 of S.L. 2014, ch. 357 declared an emergency and made this section retroactive to January 1, 2014.

63-803. Certification of budgets in dollars. [Effective January 1, 2017.] — (1) Whenever any taxing district is required by law to certify to any county treasurer, county auditor, county assessor, county commissioners or to any other county officer, any property tax levy, upon property located within said district, such certification shall, notwithstanding any other provision of the law applicable to any such district, be made at the time and in the manner hereinafter provided.

(2) The county auditor shall inform each of the taxing districts within his county of the taxable value of that district as soon as such value is known to the auditor, whether the value comes from the appraisal and assessment of real and personal property, or from allocation of the taxable value of operating property, or from other sources.

(3) Using the taxable value of the district, the council, trustees, board or other governing body of any taxing district shall certify the total amount required from a property tax upon property within the district to raise the amount of money fixed by their budget as previously prepared or approved. The amount of money so determined shall be certified in dollars to the appropriate county commissioners. Any taxing unit, except regional airport authorities, located in more than one (1) county shall divide its dollar budget for certification to the separate counties by multiplying the amount of such budget by a fraction, the numerator of which shall be the total taxable value of all property in such taxing unit within the county to which such certification is to be made, and the denominator of which shall be the total taxable value of property in such taxing unit in all such counties. Budget certification to the participating counties of regional airport authorities shall be made in the manner prescribed in section 21-807(10), Idaho Code. Taxable value shall be certified by the county auditor of each affected county to such taxing unit and such certification shall be used in this formula. Except as provided in section 33-805, Idaho Code, relating to school emergency fund levies, the certification to the county commissioners required in this section shall be made not later than the Thursday prior to the second Monday in September, unless, upon application therefor, the county commissioners grant an extension of not more than seven (7) working days. After receipt of this certification, the county commissioners shall make a tax levy as a percent of taxable value of all property in the taxing district which, when applied to the tax rolls, will meet the budget requirements certified by such taxing districts.

(4) Except as provided in subsection (1)(a) through (e) of section 50-2908, Idaho Code, for the purpose of this section, "taxable value" shall mean the portion of the equalized assessed value, less any exemptions, and the value that exceeds the value of the base assessment roll for the portion of any taxing district within a revenue allocation area of an urban renewal district, located within each taxing district which certifies a budget to be raised from a property tax levy. When the county auditor is notified of revenues sufficient to cover expenses as provided in section 50-2903(5), Idaho Code, taxable value shall also include the value that exceeds the value of the base assessment roll for the portion of any taxing district within a revenue allocation area. For each taxing district, taxable value shall include the

value from the property and operating property rolls for the current year and subsequent and missed property rolls for the prior year or the best estimate of the subsequent and missed property rolls for the current year.

History.

I.C., § 63-803, as added by 2012, ch. 339, § 13, p. 934; am. 2013, ch. 243, § 3, p. 581;

am. 2014, ch. 37, § 2, p. 63; am. 2014, ch. 357, § 6, p. 886.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 243, § 3, updated a reference in subsection (4) in light of the 2013 amendment of § 63-602KK.

This section was amended by two 2014 acts which appear to be compatible and have been compiled together.

The 2014 amendment, by ch. 37, § 2, deleted “except the exemption for personal property in section 63-602KK(2), Idaho Code” following “less any exemptions” in the first sentence of subsection (4).

The 2014 amendment, by ch. 357, § 6, deleted “except the exemption for personal property in section 63-602KK(2), Idaho Code,” following “less any exemptions” near the middle of the first sentence in subsection (4).

Compiler’s Notes.

For this section as effective until January 1, 2017, see the preceding section, also numbered § 63-803.

Although the introductory language of S.L. 2014, ch. 357, § 6 said that it was amending section 63-803, Idaho Code, as amended by S.L. 2012, ch. 339, § 13, the actual text of the session law did not reflect the contents of S.L. 2012, ch. 339, § 13. The error was inconsequential as the 2014 amendment did not address the provisions unique to S.L. 2012, ch. 339, § 13, and the purported change was also made by S.L. 2014, ch. 37, § 3.

S.L. 2014, Chapter 357 became law without the signature of the governor.

Effective Dates.

Section 17 of S.L. 2012, ch. 339, as amended by S.L. 2013, ch. 243, § 3, makes the enactment of this section effective July 1, 2017.

Section 3 of S.L. 2014, ch. 37, provided that this section should take effective on and after January 1, 2017.

Section 8 of S.L. 2014, ch. 357 provided that this section should take effect on and after July 1, 2017.

63-806. Warrant redemption fund.

JUDICIAL DECISIONS

Transfer of Funds.

Though § 31-1508 generally prohibits the transfer of any money from one county fund to another, and § 40-709(7) restricts the use of certain road funds, there are exceptions thereto: the requirement of subsection (2)

that a county transfer to the warrant redemption fund all money in the county treasury no longer needed and, in particular, all money to the credit of the county road fund, appears to fall within these exceptions. In re Boise County, 465 B.R. 156 (Bankr. D. Idaho 2011).

63-810. Erroneous levy — Corrective action. — (1) Whenever the county commissioners have discovered that a levy has been made by unintentional clerical, mathematical or electronic error, in any levy certified by such board, the county commissioners on their own motion may:

(a) If discovered prior to the fourth Monday of November of the year for which the levy is certified, order all necessary corrections made in all property tax records, if the corrected levy is otherwise within statutory limits.

(b) If discovered after the fourth Monday of November of the year for which the levy is certified, but before February 15 of the succeeding year, order all necessary corrections made in all property tax records, if the corrected levy is otherwise within statutory limits. The corrected levy

shall be applied to the taxable value within each taxing district and the property taxes so applied shall be a perpetual lien on the property, and such property tax levy and tax charge shall supersede all previous incorrect levies and charges made for that year, except that the property tax computed using the corrected levy shall allow a credit for the amount of property taxes previously paid. If additional property tax is owed due to the corrected levy, the county tax collector shall, prior to the fourth Monday in May, mail to the last record owner of any property affected by such erroneous levy a notice of tax correction. The deadline for paying such property tax shall be no later than June 20 of that year. Late charges and interest will be added if full property tax is not paid by June 20 and interest will be calculated from January 1 as provided in section 63-1001, Idaho Code.

(c) Provided the levy correction is made after the fourth Monday of November or after tax notices have been mailed, the levy correction shall be considered at a hearing held by the county commissioners at which time any taxpayer may appear and be heard upon the issue. Notice of the date, time, place and purpose of such hearing shall be published in a newspaper published in the county, or if there is none, then in a newspaper of general circulation in the county. The notice shall be run once each week for the two (2) weeks preceding the hearing. The hearing shall be held not less than seven (7) days after the first notice is published.

(2) The county commissioners shall submit the corrected levy and a copy of the order to the state tax commission. The state tax commission shall review the corrected levy and take action as required in section 63-809, Idaho Code.

(3) For the purposes of sections 63-701 through 63-710, Idaho Code, and for the purposes of the distributions required in section 63-3638, Idaho Code, the state tax commission, county auditor, and the county commissioners shall use the corrected values and numbers allowed in this section to recompute and correct such distributions by adjusting future distributions to account for any difference. For the purposes of chapters 8 and 10, title 33, Idaho Code, the state department of education shall use the corrected values and numbers allowed in this section.

History.

I.C., § 63-810, as added by 1996, ch. 98,

§ 9, p. 308; am. 2012, ch. 38, § 4, p. 115; am. 2013, ch. 21, § 6, p. 36.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 38, in subsection (1), added the proviso at the beginning of paragraph (1)(c).

The 2013 amendment, by ch. 21, substituted "February 15" for "January 30" near the middle of the first sentence in paragraph (1)(b).

Effective Dates.

Section 6 of S.L. 2012, ch. 38 declared an emergency and made this section retroactive to January 1, 2012. Approved March 6, 2012.

63-811. Computation of property taxes — Duty of county auditor.
[Effective until July 1, 2017.] — (1) The county auditor must cause to be

computed the amount of the local property taxes levied on the total of the taxable value as entered on the property and operating property rolls, and must deliver the property and operating property rolls to the tax collector on or before the first Monday of November.

(2) The county auditor must cause to be computed the amount of the local property taxes levied on the total of the taxable value as entered on the subsequent property roll, and must deliver the subsequent property roll to the tax collector as soon as possible, without delay, after the first Monday of December.

(3) The county auditor must cause to be computed the amount of the state property tax and the amount of the local property taxes levied on the total taxable value as entered on the missed property roll, and must deliver the missed property roll to the tax collector as soon as possible, without delay, after the first Monday of March of the year following the year in which the assessment was entered on the missed property roll.

(4) Except as provided in subsection (1)(a) through (f) of section 50-2908, Idaho Code, for the purpose of this section, "taxable value" shall mean the portion of the equalized assessed value, less any exemptions and the value that exceeds the value of the base assessment roll for the portion of any taxing district within a revenue allocation area of an urban renewal district, located within each taxing district which certifies a budget to be raised from a property tax levy.

(5) The county auditor, at the time of delivery to the county tax collector of the property roll, subsequent property roll, missed property roll or operating property roll with all property taxes computed, must subscribe an affidavit to such roll that he has to the best of his knowledge and ability computed the proper amount of property taxes due, and recorded such orders of the board of equalization as have been made and has made no other changes.

(6) Failure of the auditor to make the affidavit shall not affect the validity of any entry on the roll. The making of such affidavit, however, is declared to be a duty pertaining to the office of the county auditor. In every case where the said affidavit is omitted from the real property assessment roll, completed and delivered as aforesaid, the board of county commissioners must require the county auditor to make the same, and upon refusal or neglect of such county auditor to make and subscribe to such affidavit forthwith, the chairman of the said board must immediately file in the district court in the county, an information in writing, verified by his oath, charging such county auditor with refusal or neglect to perform the official duties pertaining to his office, and thereupon he must be proceeded against as in such cases provided by law.

History.

I.C., § 63-811, as added by 1996, ch. 98, § 9, p. 308; am. 2006 (1st E.S.), ch. 1, § 17;

am. 2008, ch. 253, § 3, p. 743; am. 2012, ch. 339, § 6, p. 934.

STATUTORY NOTES

Repealed effective July 1, 2017. This section is repealed effective July 1, 2017, pursuant to S.L. 2012, ch. 339, § 9, at which time a new version of this section will come into effect. For this section as effective July 1, 2017, see the following section, also numbered § 63-811.

Amendments.

The 2008 amendment, by ch. 253, added the exception in the beginning in subsection (4).

The 2012 amendment, by ch. 339, updated the reference near the beginning of subsection (4) in light of the 2012 amendment of section 50-2908.

Compiler's Notes.

Section 16 of S.L. 2012, ch. 339 provided:

"Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 4 of S.L. 2008, ch. 253 declared an emergency retroactively to January 1, 2008. Approved March 25, 2008.

Section 17 of S.L. 2012, ch. 339 declared an emergency and made this section retroactive to January 1, 2012. Approved April 5, 2012.

63-811. Computation of property taxes — Duty of county auditor. [Effective July 1, 2017.] — (1) The county auditor must cause to be computed the amount of the local property taxes levied on the total of the taxable value as entered on the property and operating property rolls, and must deliver the property and operating property rolls to the tax collector on or before the first Monday of November.

(2) The county auditor must cause to be computed the amount of the local property taxes levied on the total of the taxable value as entered on the subsequent property roll, and must deliver the subsequent property roll to the tax collector as soon as possible, without delay, after the first Monday of December.

(3) The county auditor must cause to be computed the amount of the state property tax and the amount of the local property taxes levied on the total taxable value as entered on the missed property roll, and must deliver the missed property roll to the tax collector as soon as possible, without delay, after the first Monday of March of the year following the year in which the assessment was entered on the missed property roll.

(4) Except as provided in subsection (1)(a) through (e) of section 50-2908, Idaho Code, for the purpose of this section, "taxable value" shall mean the portion of the equalized assessed value, less any exemptions and the value that exceeds the value of the base assessment roll for the portion of any taxing district within a revenue allocation area of an urban renewal district, located within each taxing district which certifies a budget to be raised from a property tax levy.

(5) The county auditor, at the time of delivery to the county tax collector of the property roll, subsequent property roll, missed property roll or operating property roll with all property taxes computed, must subscribe an affidavit to such roll that he has to the best of his knowledge and ability computed the proper amount of property taxes due, and recorded such orders of the board of equalization as have been made and has made no other changes.

(6) Failure of the auditor to make the affidavit shall not affect the validity of any entry on the roll. The making of such affidavit, however, is declared

to be a duty pertaining to the office of the county auditor. In every case where the said affidavit is omitted from the real property assessment roll, completed and delivered as aforesaid, the board of county commissioners must require the county auditor to make the same, and upon refusal or neglect of such county auditor to make and subscribe to such affidavit forthwith, the chairman of the said board must immediately file in the district court in the county, an information in writing, verified by his oath, charging such county auditor with refusal or neglect to perform the official duties pertaining to his office, and thereupon he must be proceeded against as in such cases provided by law.

History.

I.C., § 63-811, as added by 2012, ch. 339,
§ 14, p. 934.

STATUTORY NOTES**Compiler's Notes.**

For this section as effective until July 1, 2017, see the preceding section, also numbered § 63-811.

Effective Dates.

Section 17 of S.L. 2012, ch. 339 makes the enactment of this section effective July 1, 2017.

CHAPTER 9**PAYMENT AND COLLECTION OF PROPERTY TAXES****SECTION.**

63-901. Property taxes payable only in legal tender.

SECTION.

63-902. Property tax notice and receipts — Duty of tax collector.

63-901. Property taxes payable only in legal tender. — All property taxes must be paid in lawful money of the United States. Notwithstanding the provisions of this section, a county may allow for payment of taxes by use of a debit card, credit card or electronic funds transfer.

History.

I.C., § 63-901, as added by 1996, ch. 98,
§ 10, p. 308; am. 2008, ch. 53, § 2, p. 134.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 53, added the last sentence.

63-902. Property tax notice and receipts — Duty of tax collector. — (1) For property on the property roll or operating property roll, the county tax collector must, prior to the fourth Monday of November in each year, mail or transmit electronically, as that term is defined in section 63-115, Idaho Code, if electronic transmission is requested by the taxpayer, to every taxpayer, or to his agent or representative, at his last known post-office address, a tax notice prepared upon forms prescribed in section 63-219, Idaho Code, which shall contain at least the following:

- (a) The year in which the property tax was levied;
- (b) The name and address of the property owner;
- (c) An accurate description of the property, or in lieu thereof, the tax number of record;
- (d) The parcel number;
- (e) Full market value for assessment purposes;
- (f) The total amount of property taxes due:
 - (i) State;
 - (ii) County;
 - (iii) City;
 - (iv) School district separately shown as:
 - (A) Maintenance and operation;
 - (B) Bond;
 - (C) Supplemental;
 - (D) Other;
 - (v) And every other tax being separately shown.
- (g) All property tax levies in the tax code area;
- (h) The date when such property taxes become delinquent;
- (i) Notation of delinquencies against said property;
- (j) Whether an interim payment account exists;
- (k) The different payment options available to the taxpayer, his agent or representative shall be printed in boldface type in a contrasting color or highlighted on the face of the tax notice.

(2) The tax notices shall be numbered consecutively and the numbers must be entered upon all property rolls.

(3) Tax notices prepared in tax code area format shall state that levy sheets are available to the public.

(4) Levy sheets shall list the total property tax levy for each taxing district or taxing jurisdiction and the total in each tax code area.

(5) If the taxpayer is one other than the equitable titleholder, such as an escrowee, trustee of trust deed or other third party, the taxpayer shall deliver to the equitable titleholder a statement of the total amount of property taxes billed, on or before the second Monday of December.

(6) The tax collector in each county of the state is authorized to destroy all duplicate property tax receipts and microfilm of tax receipts on file in his office as they reach ten (10) years old. Property tax receipts may be destroyed if information has been replicated in other storage media.

(7) Computer and data processing routines for completion of all phases of the property tax roll procedures may be utilized with the responsibility for completion of each office's statutory duties to remain under the supervision of that office. Wherever the designation "property roll" appears within title 63, data processing or computer procedures and forms may be substituted as permanent records.

(8) The county tax collector must, as soon as possible after the subsequent or missed property roll is delivered to him from the county auditor, mail or transmit electronically, if electronic transmission is requested by the taxpayer, a notice to every taxpayer listed on the subsequent or missed property roll, or to his agent or representative. The notice shall conform as nearly as possible to the notice required for property listed on the property roll.

(9) Failure to mail or transmit electronically, if electronic transmission is requested by the taxpayer, such property tax notice, or receipt of said notice by the taxpayer, shall not invalidate the property taxes, or any proceedings in the collection of property taxes, or any proceedings in the foreclosure of property tax liens.

(10) No charge, other than property taxes, shall be included on a tax notice unless the entity placing such charge has received approval from the board of county commissioners to place such charge on the tax notice and such entity:

- (a) Has the authority by law to place a lien on property; and
- (b) Has the authority to certify such charge to the auditor; and
- (c) Is required to collect such charge in the same manner provided by law for the collection of real and personal property taxes.

(11) If a taxpayer requests to receive a tax notice electronically, the request must be made on a form provided by the county tax collector.

History.

I.C., § 63-902, as added by 1996, ch. 98, § 10, p. 308; am. 1997, ch. 117, § 33, p. 298;

am. 1997, ch. 241, § 1, p. 701; am. 2006, ch. 322, § 1, p. 1021; am. 2014, ch. 14, § 1, p. 21.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 14, inserted “or transmit electronically, as that term is defined in section 63-115, Idaho Code, if electronic transmission is requested by the tax-

payer, to” in the introductory language of subsection (1); inserted “or transmit electronically, if electronic transmission is requested by the taxpayer” in subsections (8) and (9); and added subsection (11).

CHAPTER 10

COLLECTION OF DELINQUENCY ON REAL, PERSONAL AND OPERATING PROPERTY

SECTION.

63-1007. Redemption — Expiration of right.

63-1013. Warrants of distraint — Service and execution.

63-1014. Removal or sale or repossession of

personal property before payment of property taxes on property rolls.

63-1005. Pending issue of tax deed — General provisions — Notice.

JUDICIAL DECISIONS

Itemized Statement.

The inclusion of a flat fee in the notice of pending issue of tax deed does not give an itemized and detailed list of costs and fees

and, therefore, violates the provisions of paragraph (4)(d). *Chavez v. Canyon County*, 152 Idaho 297, 271 P.3d 695 (2012).

63-1006. Hearing and issuance of tax deed.

JUDICIAL DECISIONS

ANALYSIS

Declaratory judgment.

Judicial review.

Declaratory Judgment.

Where taxpayer filed an complaint requesting a declaratory judgment, claiming that the county had no authority to proceed to the issuance of a tax deed because it had charged a flat fee without the itemization of the administrative fees required in § 63-1005, it was inappropriate for the district court to convert the taxpayer's complaint to a petition for judicial review. *Chavez v. Canyon County*, 152 Idaho 297, 271 P.3d 695 (2012).

Judicial Review.

Pursuant to subsection (4), any person ag-

grieved by a county commissioners' decision to issue a tax deed can have the decision reviewed by the district court. The district court confines its review to the record from the county and can only reverse or modify the commissioners' decision if substantial rights have been prejudiced. Upon appeal, the decision reached by the district court is examined by an appellate court only to consider whether the district court correctly decided the issues presented to it. *Chavez v. Canyon County*, 152 Idaho 297, 271 P.3d 695 (2012).

63-1007. Redemption — Expiration of right. — (1) After the issuance of a tax deed, real property may be redeemed only by the record owner or owners, or party in interest, up to the time the county commissioners have entered into a contract of sale or the property has been transferred by county deed. In order to redeem real property, the record owner or owners, or party in interest, shall pay any delinquency including the late charges, accrued interest, and costs, including, but not limited to, title search and other professional fees. The property taxes accrued against such property subsequent to the issuance of a tax deed to the county shall be extended upon a valuation to be given by the assessor upon application of the tax collector. The property taxes shall be computed according to the authorized levies for the year or years to be extended, including the current calendar year which shall be calculated using the previous year's levies until the current levies are authorized.

(2) Should such payments be made, a redemption deed shall be issued by the county tax collector into the name of the redemptioner and the rights, title and interest acquired by the county shall cease and terminate; provided however, that such right of redemption shall expire fourteen (14) months from the date of issuance of a tax deed to the county, in the event the county commissioners have not extinguished the right of redemption by contract of sale or transfer by county deed during said redemption period. In the event a tax deed is issued and payment is not received within fourteen (14) months of the issuance of such tax deed, then said tax deed to the county is presumptive evidence of the regularity of all proceedings prior thereto and the fee simple title, after the issuance of said tax deed, rests in the county.

History.

I.C., § 63-1007, as added by 1996, ch. 98,

§ 11, p. 308; am. 2001, ch. 193, § 1, p. 657; am. 2014, ch. 15, § 1, p. 23.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 15, substi-

tuted "fourteen (14) months" for "one (1) year" twice in subsection (2).

63-1013. Warrants of distraint — Service and execution. — (1) All warrants of distraint issued by the tax collector shall be served and executed

by the sheriff in the manner provided by law for the services of executions by levy upon personal property and he shall make return of the same to the tax collector of the county within ninety (90) days from the date of his receipt thereof with an endorsement thereon showing that the delinquency therein described, together with interest, late charges and costs, as provided by law, have been collected, or that, no property can be found to seize under the warrant. For making a false return the sheriff shall be liable to the county for double the amount of the property taxes, with interest and costs.

(2) Fees allowed for issuing warrants of distraint, collection, levy and return of the same, shall be set by ordinance by the board of county commissioners. When levying on a warrant of distraint, the provisions of section 31-3203, Idaho Code, shall apply in determining service fees.

(3) If the sheriff returns the warrant of distraint showing that no property can be found upon which a levy can be made to collect the delinquency, he shall note in the return the county, if any, in this state to which the delinquent taxpayer may have moved together with his mailing address and the date of his departure shall also be noted on the returns. Upon the filing of the sheriff's return showing that any delinquent taxpayer has moved to another county in this state, it shall be the duty of the tax collector to immediately issue and mail another warrant of distraint to the sheriff of the county to which the delinquent taxpayer is so shown to have moved, or in which personal property belonging to him may be found, and the sheriff to whom the other warrant of distraint is issued shall serve and return the warrant in the manner provided for the service and return of original warrants of distraint, making return of fees and commissions earned by him to the county auditor of his county, and paying any delinquency and fees collected, shown by the other warrant of distraint to be due, to the tax collector issuing the other warrant. Should a sheriff to whom the other warrant of distraint is issued be unable to find any property out of which the delinquency may be collected, he shall so return to the tax collector issuing the warrant.

History.

I.C., § 63-1013, as added by 1996, ch. 98,

§ 11, p. 308; am. 1997, ch. 117, § 34, p. 298;
am. 2010, ch. 115, § 1, p. 241.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 115, in the first sentence in subsection (2), substituted "return of the same, shall be set by ordinance

by the board of county commissioners" for "return of same, shall be ten dollars (\$10.00) for issuing each warrant."

63-1014. Removal or sale or repossession of personal property before payment of property taxes on property rolls. — (1) Whenever any person, firm or corporation owning any personal property shall desire to remove the personal property from the county or sell or repossess the property before all property taxes due and payable including the current year's taxes have been paid upon the personal property, the property taxes shall be paid to the tax collector upon demand and before the removal of the property from the county. It shall be the duty of the tax collector to collect

the property taxes provided for in this section, and all the provisions of this chapter are hereby made available to the tax collector in the collection of such taxes.

(a) If a person holding a purchase money security interest desires to repossess and sell a specific piece of personal property and the market value of that personal property exceeds twenty thousand dollars (\$20,000), that person shall provide to the tax collector a request to segregate that specific piece of personal property from the personal property tax parcel. The person holding the purchase money security interest shall provide a copy of the purchase money security interest agreement with the request for segregation.

(b) The county assessor shall determine and provide to the tax collector the market value for assessment purposes of that segregated portion of personal property. The tax collector shall calculate property tax to be paid for any delinquencies, including late charges, accrued interest, costs incurred and the estimated taxes for the current year relating to that segregated portion of personal property.

(c) The person holding the purchase money security interest shall pay all personal property taxes owed, including late charges, accrued interest and costs incurred on the specific segregated personal property to the tax collector before taking possession of the personal property or selling the property.

(d) The segregation of specific personal property from the personal property tax parcel shall not affect the priority of the tax lien on the remaining personal property items in the parcel.

(2) It shall be a misdemeanor for any person, firm or corporation to move from the county or sell or repossess any personal property or manufactured home without the payment of the current year's property taxes or without paying property taxes due and owing, and upon conviction the person, firm or corporation shall, in addition to any penalty which the court may impose, pay to the tax collector a sum not in excess of double the amount of property tax which was collectible on the property removed or sold or repossessed, together with all costs and late charges provided for in this chapter. The excess sum shall be collected by the tax collector in the same manner as the original property tax.

History.

I.C., § 63-1014, as added by 1996, ch. 98,
§ 11, p. 308; am. 2012, ch. 307, § 1, p. 848.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 307, added paragraphs (a) through (d) to subsection (1).

CHAPTER 13

MISCELLANEOUS PROVISIONS OF TAX LAW

SECTION.

63-1305A. Payment of judgment by order of court. [Null and void, effective July 1, 2017.]

63-1305B. Election — Authorization of governing body. [Null and void, effective July 1, 2017.]

63-1309. Special taxing district or bond proposal defeated in election bars

SECTION.

subsequent elections for specified time — Exception — Board of education may conduct election — Municipalities, water or sewer districts may conduct bond election.

63-1312. Municipal property taxes — Notification of valuation.

63-1305A. Payment of judgment by order of court. [Null and void, effective July 1, 2017.] — (1) Notwithstanding the provisions of section 6-928, Idaho Code, and except as provided for in section 63-1305, Idaho Code, a nonschool taxing district may certify a budget request for an amount of property tax revenues to finance an annual budget in excess of the limitations imposed by section 63-802, Idaho Code, for the purpose of paying a final judgment entered by a court of law, including interest, costs and award of attorney's fees, if any, provided that:

(a) The taxing district first budgets the maximum amount of property tax permitted pursuant to section 63-802, Idaho Code, including any available forgone amount; and

(b) All surplus funds available to the taxing district are used to pay the outstanding judgment; and

(c) The judgment was entered after December 1, 2010; and

(d) The judgment amount, including interest and award of attorney's fees, if any, exceeds one-third (1/3) of the property tax revenues used to finance the taxing district's highest annual budget in the preceding three (3) years; and

(e) The amount in excess of the limitations imposed by section 63-802, Idaho Code, authorized by this section does not increase the budget that would otherwise be applicable by more than the amount raised by a levy rate of one-tenths of one percent (0.1%).

(2) The provisions of subsection (1) of this section pertain regardless of whether the judgment is paid in cash, redeemable warrants, the proceeds of bonded indebtedness permitted as an ordinary and necessary expense or any combination of these methods of payment.

(3) The state tax commission may promulgate rules necessary to administer the provisions of this section.

(4) The levy permitted pursuant to subsection (1) of this section may be levied only until the judgment is paid in full.

History.

I.C., § 63-1305A, as added by 2012, ch. 339,
§ 1, p. 934.

STATUTORY NOTES

Repealed effective July 1, 2017. Section 17 of S.L. 2012, ch. 339 provided: "The provisions of Sections 1 and 2 of this act shall be null, void and of no force and effect on and after July 1, 2017".

Compiler's Notes.

Section 16 of S.L. 2012, ch. 339 provided: "Severability. The provisions of this act are hereby declared to be severable and if any

provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 17 of S.L. 2012, ch. 339 declared an emergency and made this section retroactive to January 1, 2012. Approved April 5, 2012.

63-1305B. Election — Authorization of governing body. [Null and void, effective July 1, 2017.] — (1) No nonschool taxing district shall exercise any powers provided pursuant to section 63-1305A, Idaho Code, unless a majority of qualified electors, voting in an election held in such nonschool taxing district, vote to approve the question of whether the governing body of such district may exercise the powers and authority provided for in section 63-1305A, Idaho Code.

(2) The election provided for in this section shall be held in accordance with the provisions of section 34-106, Idaho Code.

History.

I.C., § 63-1305B, as added by 2012, ch. 339, § 2, p. 934.

STATUTORY NOTES

Repealed effective July 1, 2017. Section 17 of S.L. 2012, ch. 339 provided: "The provisions of Sections 1 and 2 of this act shall be null, void and of no force and effect on and after July 1, 2017".

Compiler's Notes.

Section 16 of S.L. 2012, ch. 339 provided: "Severability. The provisions of this act are hereby declared to be severable and if any

provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 17 of S.L. 2012, ch. 339 declared an emergency and made this section retroactive to January 1, 2012. Approved April 5, 2012.

63-1309. Special taxing district or bond proposal defeated in election bars subsequent elections for specified time — Exception — Board of education may conduct election — Municipalities, water or sewer districts may conduct bond election. — If any election has been held for the formation of any special taxing district, or for the approval of any bond issue or other proposal which would have resulted in a property tax levy, and the proposal submitted at such election was defeated, no subsequent election shall be held within two (2) months from and after the date of such prior election for the same or a similar purpose in any district which includes any part of the area which was affected by the prior election. In the event any school building is destroyed or rendered unusable for school purposes by reason of fire, flood or other catastrophe, and a school bond election for the purpose of the replacement of such building is prohibited by the provisions of this section or by the provisions of section 34-106, Idaho Code, the state board of education shall have the power to authorize an

election for such purpose by order based upon a finding of such facts. The provisions of this section shall not apply to school elections held solely for determining property tax levies for general school purposes not involving the issuance of bonds. This time requirement between elections shall not apply to municipalities or water and/or sewer districts when bond issues are being proposed for the installation or improvement of water supply systems or public sewerage systems which have been deemed necessary by the Idaho state board of health and welfare to bring such system or systems in conformance with state statutes or rules of the state board of health and welfare.

History.

I.C., § 63-1309, as added by 1996, ch. 98, § 14, p. 308; am. 2009, ch. 341, § 144, p. 993.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 341, in the first sentence, substituted “two (2) months” for “six (6) months”; in the second sentence, inserted “or by the provisions of section 34-106, Idaho Code”; and, in the last sentence, twice substituted “state board of health and welfare” for “state board of health.”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

63-1312. Municipal property taxes — Notification of valuation. —

(1) Prior to the fourth Monday of March of the current year the county auditor must notify every taxing district or authority, other than school districts, of the total taxable valuation of all the taxable property situated within such districts for the preceding calendar year for the purpose of assisting such governing authorities in their determination of tax rates to be levied for the current year and other informational purposes. Prior to the fourth Monday of March of the current year the state tax commission must notify the state board of education and the state department of education of the total taxable valuation of all the taxable property situated within each school district for the preceding calendar year.

(2) Prior to the first Monday in August the auditor of each county in the state shall notify the state tax commission and the clerk of each taxing unit in his county of the taxable valuation of all the taxable property situated within that taxing district from the property roll for the current year, from the operating property roll for the previous year, from the prior year’s actual or current year’s estimated subsequent property roll and missed property roll, and the amount of value subject to occupancy tax notwithstanding exemptions authorized in chapter 6, title 63, Idaho Code, for the previous year.

(3) The auditor shall furnish the valuation from the current operating property roll upon receipt from the state tax commission.

(4) Subsequent to the notification of the county auditor of revenues sufficient to cover expenses as provided in section 50-2903(5), Idaho Code, taxable value as used in this section shall also include the value that

exceeds the value of the base assessment roll for the portion of any taxing district within a revenue allocation area.

History.

I.C., § 63-1312, as added by 1996, ch. 98,

§ 14, p. 308; am. 2002, ch. 143, § 8, p. 394; am. 2012, ch. 38, § 5, p. 115.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 38, in subsection (1), substituted “other than school districts” for “and the state board of education” in the first sentence and added the last sentence.

Effective Dates.

Section 6 of S.L. 2012, ch. 38 declared an emergency and made this section retroactive to January 1, 2012. Approved March 6, 2012.

CHAPTER 17**TAXATION OF FOREST LANDS AND FOREST PRODUCTS****SECTION.**

63-1703. Certain forest lands to be designated for taxation by owner — Limitations.

63-1705. Taxation of forest lands under the productivity option.

SECTION.

63-1706. Yield tax on applicable forest products.

63-1703. Certain forest lands to be designated for taxation by owner — Limitations. — For the purposes of appraisal, assessment and taxation under the provisions of this chapter, all forest lands in parcels of five (5) or more acres but less than five thousand (5,000), whether contiguous or not, as long as such parcels are held in common ownership, must be designated by the forest landowner to be subject to the provisions of either subsection (a) or (b) of this section. A forest landowner cannot have parcels designated under the provisions of both subsections (a) and (b) of this section at one (1) time. If the forest landowner fails to make a designation, his forest lands shall be subject to appraisal, assessment and taxation under the provisions of section 63-1702, Idaho Code. Once a designation is made by the forest landowner, such designation must remain in effect until the designation period expires, unless the forest lands are transferred to another owner using a different taxing category; in such case, the taxing category of the transferred forest lands shall be the same as that maintained by the new owner.

A forest landowner may change the designation of all forest lands in common ownership at the end of any designation period, subject to the recapture of any deferred taxes due as a result of such change. After January 1 and by December 31 of the tenth year of each designation period the forest landowner must notify the county assessor of any change in forest land designation. Failure to notify the county assessor will result in the continuation of the landowner’s present designation until the end of the next designation period.

Any substantial change in the use of forest lands not conforming with the definition of forest land in section 63-1701, Idaho Code, during such ten (10)

year period under the designations made in subsection (a) or (b) of this section shall be reported by the landowner to the county assessor within thirty (30) days of the change in use. Upon notification of the change in use, the assessor shall appraise, assess and tax those acres as provided by applicable laws and rules. Failure to notify the assessor of the change in use when forest lands have been designated as subject to the provisions of subsection (a) or (b) of this section shall cause forfeiture of such designation, and cause that property to be appraised, assessed and taxed as provided in section 63-1702, Idaho Code.

Forest lands designated for assessment pursuant to the provisions of section 63-1706, Idaho Code, shall be subject to the recapture of deferred taxes upon removal of such designation, a substantial change in use, or ownership transfer, except that there shall be no recapture initiated upon ownership transfer of forest lands designated as subject to the provisions of section 63-1706, Idaho Code, to a landowner with forest lands already designated as subject to the provisions of section 63-1706, Idaho Code, prior to the transfer, or who so designates his lands to be subject to the provisions of section 63-1706, Idaho Code. In the event payment is offered or made, it shall be accepted by the county treasurer and applied in the manner of payment of other property tax.

The dollar amount of deferred taxes subject to recapture shall be determined by the county assessor by applying current tax levies against the current values that would have been in effect if the lands were subject to appraisal and assessment during the current year under the provisions of section 63-1705, Idaho Code, if there has been a change in ownership or a removal of designation, or section 63-1702, Idaho Code, if there has been a change in use with no change in ownership, which amount shall be multiplied by the number of years that the lands have been subject to the designation under section 63-1706, Idaho Code. The amount of the deferred tax shall accrue through designation periods, up to a maximum of ten (10) years, and shall apply to the most recent ten (10) years in which the parcel has been designated under the provisions of section 63-1706, Idaho Code. A credit shall be allowed for taxes actually paid under the provisions of section 63-1706, Idaho Code, for an identical ten (10) year period, up to the total amount of the deferred taxes. All deferred amounts shall be a lien against the land. Deferred tax amounts shall be calculated by the county assessor on forms prescribed by the state tax commission. Deferred tax amounts shall be supplied by the county assessor to the county treasurer by May 15 of the year following conveyance or within thirty (30) days of removal of designation, or of learning of a change in use. All deferred tax amounts shall be due and payable to the county treasurer on demand and shall become delinquent if not paid by the demand due date specified by the county treasurer on the forms prescribed by the state tax commission. If the deferred tax is not paid as provided above, the payment becomes delinquent and subject to late charges, and interest in the amounts provided in sections 63-201(12) and 63-1001, Idaho Code, and subject to collection in the manner as set forth in chapter 10, title 63, Idaho Code. Estimated deferred tax amounts may be held by the county treasurer in a tax anticipation account from the date of conveyance until June 1 of the year following conveyance.

The county treasurer shall cause the deferred taxes and any penalty and interest paid pursuant to the provisions of this section to be apportioned to the various taxing authorities within which the property subject to the tax is located in the same manner as property taxes.

(a) A forest landowner may choose to have his forest land assessed, appraised and taxed under the provisions of section 63-1705, Idaho Code, by filing such choice with the county assessor on a form prescribed by the state tax commission. Designation filed pursuant to section 63-1705, Idaho Code, shall become effective the first day of January following the year of designation.

(b) A forest landowner may choose to have his forest land assessed, appraised and taxed under the provisions of section 63-1706, Idaho Code, by filing such choice with the county assessor on a form prescribed by the state tax commission. Designation filed pursuant to section 63-1706, Idaho Code, shall become effective the first day of January following the year of designation.

(c) All forest products or timber harvested from investment lands not designated as subject to the provisions of section 63-1702, 63-1705 or 63-1706, Idaho Code, and delivered to a point of utilization as logs or semiprocessed forest products, except those forest products harvested for the domestic use of the landowner under the provisions of section 63-1708, Idaho Code, shall be subject to the yield tax at the time of harvest in the same manner provided for in section 63-1706, Idaho Code.

History.

I.C., § 63-1703, as added by 1982, ch. 123, § 5, p. 349; am. 1984, ch. 237, § 1, p. 566; am. 1992, ch. 18, § 2, p. 52; am. 1994, ch. 370, § 2, p. 1188; am. 1995, ch. 90, § 1, p. 259; am.

1996, ch. 322, § 60, p. 1029; am. 1996, ch. 431, § 1, p. 1464; am. 2004, ch. 183, § 1, p. 572; am. 2008, ch. 53, § 4, p. 135; am. 2008, ch. 400, § 5, p. 1099; am. 2009, ch. 11, § 24, p. 14.

STATUTORY NOTES

Amendments.

This section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 53, in the fifth paragraph, updated the reference to § 63-201 in the next-to-last sentence in light of the amendment of this section by S.L. 2008, chapter 53.

The 2008 amendment, by ch. 400, in the fifth paragraph, updated the reference to

§ 63-201 in the seventh sentence in light of the amendment of that section by S.L. 2008, chapter 400.

The 2009 amendment, by ch. 11, substituted “63-201(12)” for “63-201(109)” in the fifth undesignated paragraph.

Effective Dates.

Section 10 of S.L. 2008, ch. 40 provided that the act shall be in full force and effect on and after January 1, 2009.

63-1705. Taxation of forest lands under the productivity option.

—(1) In order to encourage private forest landowners to retain and improve their holdings of forest lands and to promote better forest management, forest lands subject to this option shall be appraised, assessed and taxed as real property under the provisions of this section.

(2) The forest land value shall be determined by the timber productivity valuation process, as provided for in the committee on forest land taxation methodologies, user’s guide to the timber productivity option’s valuation

method — 2005 (Schlosser, January 1, 2005, Moscow, Idaho), referred to in this chapter as the “user’s guide,” on file with the Idaho state tax commission, available on the website of the Idaho state tax commission, and which shall be made available in the office of each county assessor, which values the net wood production over a reasonable rotation period plus other agricultural-related income, if any, less annualized custodial expenses as defined in section 63-1701, Idaho Code. Pursuant to the provisions of this section, the inventory of forest products shall not be included as part of the valuation of the forest land as provided in section 63-602W, Idaho Code. The state tax commission shall promulgate rules relating to the timber productivity valuation process, including custodial expenses, as provided for in the user’s guide and the provisions of this chapter.

(3) The market value for assessment purposes shall be determined annually by the county assessor using the timber productivity valuation process developed by the CFTM, and as further prescribed in rule. Effective January 1, 2012, the forest land values for taxation purposes will be floored at the 2011 valuation level of all four (4) of the forest value zones for the next ten (10) year period. The ceiling for taxation purposes for forest land values during such ten (10) year period will be capped at thirty percent (30%) above the 2011 forest land values. The annual changes for taxation purposes shall be limited to not more than a five percent (5%) annual increase or decrease from the immediate prior year based upon the 2005 “user’s guide” valuation model, provided however, that no decrease shall be in an amount less than the established floor nor increase above the established ceiling.

Actual annual valuation calculations shall also be tracked, though not necessarily utilized for taxation purposes. Actual annual valuation calculations may drop below the floor or rise above the ceiling. Forest land values derived by the model will be used as the forest land value for taxation purposes only when the derived value is between the floor and the ceiling. Furthermore, the actual annual valuation calculations shall not exceed a five percent (5%) adjustment from the previous year’s valuation calculation. When the model derived values for a given year are below the floor, the forest land value for taxation purposes will be equal to the floor value for that year. When the model derived values in a given year are above the ceiling, the forest land value for taxation purposes will be equal to the ceiling for that year.

Notwithstanding any other provision of law, the state tax commission is authorized to cite the user’s guide in its rules and shall:

- (a) Divide the state into appropriate forest valuation zones, with each zone designated so as to recognize the uniqueness of marketing areas, timber types, growth rates, access, operability, and other pertinent factors of that zone;
- (b) Establish a uniform system of forest land classification which considers the productive capacity of the soil to grow forest products and furnish other associated agricultural uses;
- (c) Provide for the annual input to the timber productivity valuation process including the stumpage value, rotation length, mean annual increment, guiding discount rate, annualized custodial expenses, appro-

appropriate property tax rates, and real price appreciation rate of stumpage according to the user's guide. The guiding discount rate and the real price appreciation rate for timber products shall remain constant at four percent (4%) and one and one-quarter percent (1.25%) respectively, until January 1, 2017;

(d) Upon the recommendation of the CFTM or when deemed appropriate by the commission according to evidence of significant trends in custodial expenses, conduct a forest management cost study; provided however, that such forest management cost study shall be no more frequent than five (5) years from the previous forest management cost study. The forest management cost study and a report shall be provided to the CFTM following a recommendation of any changes in custodial expenses and the CFTM shall determine whether the cost study will be incorporated into the forest land valuation process. The forest management cost allowance (FMCA) will continue to be calculated based on the 2004 CFTM negotiated custodial rates and indexed by the adjustment in the ten (10) year rolling average changes in the producer price index (PPI), as has been done by the Idaho state tax commission since 2005, and this will remain in effect until January 1, 2017; and

(e) Provide for any additional data as needed.

(4) The state tax commission shall by March 1 of each year, furnish all input for the timber productivity valuation process to the county assessor.

(5) Stumpage values shall be based upon the preceding five (5) year rolling average value of timber harvested within the forest value zone from state timber sales and/or the best available data for the same five (5) year period. Average agricultural-related income and the average expense component for each forest value zone shall be determined for the same time period as the period used to determine average stumpage values.

(6) Forest lands upon which, at any time after January 1, 1982, the trees are destroyed by fire, disease, insect infestation or other natural disaster such that the lands affected will not meet minimum stocking requirements under rules adopted pursuant to chapter 13, title 38, Idaho Code, shall be eligible for a reduction in value for the first ten (10) property tax years following the loss. The amount of reduction shall be determined by dividing the average age of the trees destroyed by the rotation age for the specific forest productivity class appropriate for the affected acres. In no instance shall the annual reduction exceed eighty percent (80%) of the original forest value per year. In order to obtain a reduction, the landowner shall, on or before January 1, following the destruction, make written application to the assessor indicating the legal description of the lands in question and stating all pertinent facts. The assessor may investigate the facts and may request assistance from the state tax commission in performing such investigations. If the requirements are met, such forest lands shall be assessed and taxed on the reduced basis herein provided.

(7) Buildings and other improvements, other than roads, located on forest lands shall be appraised, assessed and taxed as provided by applicable laws and rules.

(8) There is created within the Idaho state tax commission the CFTM. The membership of the CFTM shall be:

- (a) A nonvoting chairman who shall be the member of the Idaho state tax commission assigned to property tax matters;
- (b) Four (4) members who are representing business entities owning not less than five thousand (5,000) acres of Idaho forest land, provided that there shall be only one (1) representative for each individual business entity and provided further that affiliated business entities shall be considered a single business entity for the purposes of this section. The business entity employing such member shall designate a successor member at its discretion. If a vacancy occurs among the representatives of forest landowners owning not less than five thousand (5,000) acres, a replacement member will be selected by the remaining members qualifying under the provisions of this section;
- (c) One (1) member selected from the membership of the Idaho forest owners' association;
- (d) Five (5) members selected from the membership of the Idaho association of counties; and
- (e) The state superintendent of public instruction or his/her designee, in a nonvoting capacity.

The CFTM may retain a forest economist selected by a majority of its members to advise the CFTM.

The costs of each CFTM member shall be borne by the respective member. The fees and costs of the forest economist shall be borne as determined by the CFTM.

The CFTM may prepare and deliver written reports to the house of representatives revenue and taxation and senate local government and taxation committees of its findings and recommendations for legislation as the need may arise. The CFTM may meet periodically as determined by its chairman or the CFTM.

History.

I.C., 63-1705, as added by 1982, ch. 123, § 5, p. 353; am. 1984, ch. 237, § 2, p. 568; am. 1996, ch. 322, § 61, p. 1090; am. 1998, ch.

198, § 1, p. 711; am. 2000, ch. 156, § 2, p. 397; am. 2005, ch. 24, § 2, p. 74; am. 2011, ch. 5, § 1, p. 11; am. 2012, ch. 9, § 1, p. 14.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 5, in subsection (3), deleted "Effective January 1, 2005" from the beginning of the introductory paragraph and rewrote paragraph (d), which formerly read: "Conduct a forest management cost study every five (5) years to determine the annualized custodial expenses to be used in the timber productivity valuation process as provided in the user's guide. The first study shall be conducted in 2005 and evaluated by the CFTM, with the results incorporated into the user's guide timber productivity valuation process on January 1, 2007. The forest management cost study shall be funded by the state tax commission, subject to appropriation by the legislature"; and, in subsection (8), deleted "Effective January 1, 2004" from the

beginning of the introductory paragraph and rewrote paragraph (b), which formerly read: "Four (4) members selected from the membership of the intermountain forest association."

The 2012 amendment, by ch. 9, in subsection (3), added the last three sentences at the end of the first paragraph, added the second paragraph, substituted "January 1, 2017" for "January 1, 2012" at the end of paragraph (c) in the third paragraph, and added the last sentence in paragraph (d) in the third paragraph.

Effective Dates.

Section 2 of S.L. 2012, ch. 9 declared an emergency and made this section retroactive to January 1, 2012. Approved February 13, 2012.

63-1706. Yield tax on applicable forest products. — (1) All forest lands designated by the owner to be subject to the provisions of section 63-1703(b), Idaho Code, shall be appraised, assessed and taxed according to the provisions of this section.

(2) Forest lands held in private ownership and designated by the owner to be subject to the provisions of this section for property taxation shall be valued by the county assessor as real property at rates which reflect only bare forest land value as determined under rules of the state tax commission.

(3) All timber severed from lands subject to the provisions of this section and delivered to a point of utilization as logs or semiprocessed forest products shall be subject to a forest products yield tax. This yield tax is in lieu of and replacement for, and not in addition to, property taxes on timber.

(4) The yield tax rate shall be three percent (3%) of stumpage value as determined by the state tax commission. In establishing stumpage values, the state tax commission shall:

(a) Divide the state into appropriate stumpage value zones, with each zone designated so as to recognize the uniqueness of timber marketing areas.

(b) By November 1, set stumpage values by zone for each species and/or product for use in the reporting and payment of yield taxes for timber severed during the following calendar year. Stumpage values shall be based on a five (5) year rolling average value of comparable timber harvested from state timber sales within the stumpage value zone and/or the best available data for the same five (5) year period.

(5) Report and payment of yield taxes become the direct liability and responsibility of the landowner at the time of severance. At the time of severance the yield taxes become a perpetual lien on the real and personal property of the landowner. Yield tax amounts shall be calculated by the county assessor on forms prescribed by the state tax commission. Yield tax amounts shall be supplied by the county assessor to the county tax collector on or before November 15 for timber that was severed from January 1 through June 30. The county tax collector shall, by the fourth Monday in November, notify the landowner of any such yield tax amount with payments due and payable on or before December 20. If the taxes due for said period are not paid on or before December 20, the payment becomes delinquent and subject to late charges and interest in the amount provided in sections 63-201 and 63-1001 or 63-904, Idaho Code, calculated from the following January 1. Yield tax amounts shall be supplied by the county assessor to the county tax collector on or before May 15 for timber severed from July 1 through December 31 in the year following severance. The county tax collector shall, by the fourth Monday in May, notify the landowner of any such yield tax amount with payments due on or before June 20 in the year following severance. If the yield taxes due for said period are not paid on or before June 20, the payment becomes delinquent and subject to late charges and interest in the amount provided in sections 63-201 and 63-1001 or 63-904, Idaho Code, calculated from the following July 1. Delinquent yield taxes shall remain a lien against the land from

which the timber was harvested and against any other real and personal property of the landowner who owned the land at the time of severance. To collect delinquent yield taxes, the treasurer may use either the personal or real property collection procedures provided in title 63, Idaho Code.

(6) All yield tax revenues and any late charges or interest thereon shall be apportioned among the several county funds and taxing districts as provided for the apportionment of property taxes.

(7) The party utilizing logs or semiprocessed forest products as raw materials shall be required to report the quantity, species and source of all such materials to the Idaho department of lands. Such report shall be structured to comply with and act as a simultaneous report of data already required under the provisions of section 38-122, Idaho Code. The report format shall include the identification of the forest landowner at the source, legal description of the source, timber or product owner at time of severance, harvester and volume of forest products severed. The Idaho department of lands shall deliver to the various county assessors without fee, copies of these reports as they are available. In the event the point of utilization lies out of the state or a report is not required under the provisions of section 38-122, Idaho Code, the timber owner at time of severance shall be responsible for the reporting of the above-stated data to the department of lands.

(8) If reports required by this section are found to be intentionally false or when appropriate reports are not made, the assessor shall value the forest crop harvested, based on the best available estimates.

(9) Not reporting timber or forest products delivery or receipt as required by this section shall be deemed a misdemeanor.

(10) Buildings and other improvements, other than roads, located on forest lands shall be appraised, assessed and taxed as provided by applicable law and rules.

History.

I.C., § 63-1706, as added by 1982, ch. 123, § 5, p. 349; am. 1987, ch. 205, § 1, p. 431; am. 1994, ch. 370, § 3, p. 1188; am. 1996, ch. 98,

§ 17, p. 308; am. 1996, ch. 132, § 1, p. 454; am. 1997, ch. 117, § 38, p. 298; am. 2014, ch. 77, § 3, p. 202.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 77, in subsection (5), added "The county tax collector shall, by the fourth Monday in November, notify the landowner of any such yield tax amount" at the beginning of the present fifth sentence and "The county tax collector shall, by the fourth Monday in May, notify the landowner

of any such yield tax amount" at the beginning of the present eighth sentence.

Effective Dates.

Section 4 of S.L. 2014, ch. 77 declared an emergency and made this section retroactive to January 1, 2013.

CHAPTER 23

LICENSE TAXES

SECTION.

63-2304. Auctioneer's license. [Repealed.]

63-2303. Pawnbroker's license.

RESEARCH REFERENCES

A.L.R. — Validity of statutes, ordinances, and regulations governing pawn shops. 16 A.L.R.6th 219.

63-2304. Auctioneer's license. [Repealed.]

Repealed by S.L. 2011, ch. 56, § 1, effective July 1, 2011.

History.

I.C., § 63-2304, as added by 1995, ch. 206, § 2, p. 701.

CHAPTER 24

FUELS TAX

SECTION.

63-2401. Definitions.

63-2404. Method of measurement of gallons received.

63-2406. Distributor reports.

63-2407. Deductions authorized.

63-2408. Aircraft engine fuel tax.

63-2411. Purchase of motor fuel by retail dealers.

63-2412. Distribution of tax revenues from tax on gasoline and aircraft engine fuel.

63-2418. Distribution of tax revenues from tax on special fuels.

63-2421. Use tax — Returns and payment of use tax by consumers.

SECTION.

63-2423. Credits and refunds to consumers.

63-2424. Gaseous fuels.

63-2425. Dyed fuel and other untaxed fuel prohibited for use on a highway — Penalties.

63-2427A. Distributor's license.

63-2429. Required records.

63-2430. Revocation or cancellation of license.

63-2431. Tax in lieu of all other taxes imposed.

63-2436. Reports of importations by carrier — Contents.

63-2401. Definitions. — In this chapter:

(1) "Aircraft engine fuel" means:

(a) Aviation gasoline, defined as any mixture of volatile hydrocarbons used in aircraft reciprocating engines; and

(b) Jet fuel, defined as any mixture of volatile hydrocarbons used in aircraft turbojet and turboprop engines.

(2) "Biodiesel" means any fuel that is derived in whole or in part from agricultural products or animal fats or the wastes of such products and is suitable for use as fuel in diesel engines.

(3) "Biodiesel blend" means any fuel produced by blending biodiesel with petroleum-based diesel to produce a fuel suitable for use in diesel engines.

(4) "Bond" means:

(a) A surety bond, in an amount required by this chapter, duly executed by a surety company licensed and authorized to do business in this state conditioned upon faithful performance of all requirements of this chapter, including the payment of all taxes, penalties and other obligations arising out of the provisions of this chapter; or

(b) A deposit with the commission by any person required to be licensed pursuant to this chapter under terms and conditions as the commission may prescribe, of a like amount of lawful money of the United States or bonds or other obligations of the United States, the state of Idaho, or any county of the state; or

(c) An irrevocable letter of credit issued to the commission by a bank doing business in this state payable to the state upon failure of the person on whose behalf it is issued to remit any payment due under the provisions of this chapter.

(5) "Commercial motor boat" means any boat, equipped with a motor, which is wholly or partly used in a profit-making enterprise or in an enterprise conducted with the intent of making a profit.

(6) "Commission" means the state tax commission of the state of Idaho.

(7) "Distributor" means any person who receives motor fuel in this state, and includes a special fuels dealer. Any person who sells or receives gaseous fuels will not be considered a distributor unless the gaseous fuel is delivered into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him.

(8) "Dyed fuel" means diesel fuel that is dyed pursuant to requirements of the internal revenue service, or the environmental protection agency.

(9) "Exported" means delivered by truck or rail across the boundaries of this state by or for the seller or purchaser from a place of origin in this state.

(10) "Gasohol" means gasoline blended with ten percent (10%) or more of anhydrous ethanol.

(11) "Gasoline" means any mixture of volatile hydrocarbons suitable as a fuel for the propulsion of motor vehicles or motor boats. "Gasoline" also means aircraft engine fuels when used for the operation or propulsion of motor vehicles or motor boats and includes gasohol, but does not include special fuels.

(12) "Highways" means every place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel which is maintained by the state of Idaho or an agency or taxing subdivision or unit thereof or the federal government or an agency or instrumentality thereof. Provided, however, if the cost of maintaining a roadway is primarily borne by a special fuels user who operates motor vehicles on that roadway pursuant to a written contract during any period of time that a special fuels tax liability accrues to the user, such a roadway shall not be considered a "highway" for any purpose related to calculating that user's special fuels' tax liability or refund.

(13) "Idling" means the period of time greater than twenty-five hundredths (.25) of an hour when a motor vehicle is stationary with the engine operating at less than one thousand two hundred (1,200) revolutions per minute (RPM), without the power take-off (PTO) unit engaged, with the transmission in the neutral or park position, and with the parking brake set.

(14) "Imported" means delivered by truck or rail across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.

(15) "International fuel tax agreement" and "IFTA" mean the international fuel tax agreement required by the intermodal surface transportation efficiency act of 1991, Public Law 102-240, 105 Stat. 1914, and referred to in title 49, U.S.C., section 31701, including subsequent amendments to that agreement.

(16) "Jurisdiction" means a state of the United States, the District of Columbia, a province or territory of Canada, or a state, territory or agency of Mexico in the event that the state, territory or agency participates in the international fuel tax agreement.

(17) "Licensed distributor" means any distributor who has obtained a license under the provisions of section 63-2427A, Idaho Code.

(18) "Motor fuel" means gasoline, ethanol, ethanol blended fuel, gasoline blend stocks, natural gasoline, special fuels, aircraft engine fuels or any other fuels suitable for the operation or propulsion of motor vehicles, motor boats or aircraft.

(19) "Motor vehicle" means every self-propelled vehicle designed for operation, or required to be licensed for operation, upon a highway.

(20) "Person" means any individual, firm, fiduciary, copartnership, association, limited liability company, corporation, governmental instrumentality including the state and all of its agencies and political subdivisions, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed by the context. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association means the partners or members, and as applied to corporations, the officers.

(21) "Recreational vehicle" means a snowmobile as defined in section 67-7101, Idaho Code; a motor driven cycle or motorcycle as defined in section 49-114, Idaho Code; any recreational vehicle as defined in section 49-119, Idaho Code; and an all-terrain vehicle as defined in section 67-7101, Idaho Code.

(22) "Retail dealer" means any person engaged in the retail sale of motor fuels to the public or for use in the state.

(23) "Special fuels" means:

(a) All fuel suitable as fuel for diesel engines;

(b) A compressed or liquified gas obtained as a byproduct in petroleum refining or natural gasoline manufacture, such as butane, isobutane, propane, propylene, butylenes, and their mixtures; and

(c) Natural gas, either liquid or gas, and hydrogen, used for the generation of power for the operation or propulsion of motor vehicles.

(24) "Special fuels dealer" means "distributor" under subsection (7) of this section.

(25) "Special fuels user" means any person who uses or consumes special fuels for the operation or propulsion of motor vehicles owned or controlled by him upon the highways of this state.

(26) "Use" means either:

- (a) The receipt, delivery or placing of fuels by a licensed distributor or a special fuels dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while the vehicle is within this state; or
- (b) The consumption of fuels in the operation or propulsion of a motor vehicle on the highways of this state.

History.

I.C., § 63-2401, as added by 1983, ch. 158, § 4, p. 436; am. 1984, ch. 87, § 1, p. 169; am. 1985, ch. 40, § 1, p. 81; am. 1985, ch. 242, § 1, p. 570; am. 1986, ch. 315, § 1, p. 777; am. 1987, ch. 82, § 1, p. 155; am. 1988, ch. 265, § 578, p. 549; am. 1991, ch. 306, § 1, p. 802; am. 1991, ch. 307, § 1, p. 805; am. 1992, ch. 106, § 1, p. 327; am. 1994, ch. 344, § 1, p.

1080; am. 1995, ch. 132, § 1, p. 565; am. 1995, ch. 348, § 1, p. 1142; am. 1996, ch. 223, § 1, p. 731; am. 1997, ch. 86, § 1, p. 205; am. 2001, ch. 104, § 1, p. 343; am. 2002, ch. 30, § 1, p. 37; am. 2002, ch. 174, § 3, p. 508; am. 2002, ch. 345, § 35, p. 963; am. 2004, ch. 235, § 1, p. 693; am. 2004, ch. 265, § 1, p. 745; am. 2005, ch. 293, § 1, p. 931; am. 2007, ch. 37, § 1, p. 88; am. 2010, ch. 14, § 1, p. 14.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 14, in subsection (18), inserted "ethanol, ethanol blended fuel, gasoline blend stocks, natural gasoline"; and in subsection (24), substituted "subsection (7)" for "subsection (6)."

emergency and provided that this section be in full force and effect on and after July 1, 2010, and untaxed ethanol held in inventory on July 1, 2010, shall be deemed received on July 1, 2010. Approved February 24, 2010.

Effective Dates.

Section 4 of S.L. 2010, ch. 14 declared an

63-2404. Method of measurement of gallons received. — Motor fuels and other petroleum products received by distributors shall be reported under rules prescribed by the state tax commission, and be based upon consistent methods, generally recognized and accepted for motor fuels tax accounting purposes, in respect to gallonage, stock transfers and stock accounting records.

History.

I.C., § 63-2404, as added by 1983, ch. 158,

§ 4, p. 436; am. 1983, ch. 242, § 2, p. 650; am. 2011, ch. 6, § 2, p. 14.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 6, substituted "Motor fuels and other petroleum products" for "Gasoline and/or aircraft engine fuel" at the beginning and substituted "rules pre-

scribed by the state tax commission" for "rules and regulations prescribed by the commission" and "motor fuels tax" for "gasoline and/or aircraft engine fuel" near the middle of the section.

63-2406. Distributor reports. — (1) Each distributor shall, not later than the last day of each calendar month or for such other reporting period as the commission may authorize, render to the commission an accurate report of all motor fuel received by him in this state during the preceding reporting period. The report shall be made in the manner and on forms required by the commission.

(2) The distributor's report shall include:

(a) An itemized statement of the total number of gallons of motor fuel received during the preceding calendar month; and

(b) Other information as the commission may require for the proper administration of this chapter.

(3) The report shall be accompanied by a remittance of the tax shown to be due on the report together with any applicable interest and penalty, unless the amounts due are paid by electronic funds transfer in the manner provided by section 67-2026, Idaho Code.

(4) Any distributor required to pay the tax imposed by this chapter who fails to pay such tax shall be liable to the commission for the amount of tax not remitted plus any applicable penalty or interest. The commission may collect such amounts in the manner provided in section 63-2434, Idaho Code.

(5) The commission may prescribe rules providing standards consistent with section 63-115, Idaho Code, for determining which returns must be transmitted electronically. The commission may not require any person to transmit returns electronically unless such person is required to report on the return at least twenty-five (25) transactions involving the receipt or disbursement of motor fuel during the period to which the return relates. In promulgating such rules, the commission shall take into account, among other relevant factors, the ability of the taxpayer to comply, at a reasonable cost, with the requirements of such rules.

History.

I.C., § 63-2406, as added by 1983, ch. 158,
§ 4, p. 436; am. 1998, ch. 103, § 3, p. 353; am.

2000, ch. 155, § 1, p. 392; am. 2009, ch. 3, § 1,
p. 5.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 3, added subsection (5).

63-2407. Deductions authorized. — Each licensed distributor shall deduct from his monthly report:

(1) Motor fuel exported from this state other than in the supply tanks of motor vehicles, motor boats or aircraft when supported by a shipping document, an invoice signed by the purchaser, or other proper documents approved by the commission but only if:

(a) The purchaser is not a licensed distributor and the seller can establish that any tax due in the jurisdiction to which the motor fuel is destined is paid; or

(b) The purchaser is a licensed distributor in the jurisdiction to which the motor fuel is destined.

(2) Motor fuel returned to a licensed distributor's refinery or pipeline terminal storage when supported by proper documents approved by the commission.

(3) Motor fuel lost or destroyed by fire, lightning, flood, tornado, wind-storm, explosion, or other accidental casualty, after presenting to the commission satisfactory proof of loss.

(4) The number of gallons which would be equal to two percent (2%) of the total number of gallons received during the reporting period, less the total number of gallons deducted under subsections (1) through (3) of this section, which credit is granted to the licensed distributor to reimburse him for loss from evaporation, handling, spillage and shrinkage, except losses caused by casualty as provided in subsection (3) of this section.

(5) Motor fuel sold to the Idaho national guard for use in aircraft and in vehicles used off public highways provided, however, such deduction is supported by an exemption certificate signed by an authorized officer of the Idaho national guard.

History.

I.C., § 63-2407, as added by 1983, ch. 158, § 4, p. 436; am. 1987, ch. 209, § 1, p. 442; am. 1989, ch. 406, § 1, p. 993; am. 1995, ch. 132, § 2, p. 565; am. 1995, ch. 303, § 1, p. 1051;

am. 1996, ch. 223, § 2, p. 731; am. 1998, ch. 103, § 4, p. 353; am. 2002, ch. 30, § 3, p. 37; am. 2007, ch. 37, § 2, p. 88; am. 2007, ch. 288, § 2, p. 817; am. 2009, ch. 332, § 1, p. 962.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 332, deleted subsection (6), regarding deductions for certain motor fuels.

Legislative Intent.

Section 6 of S.L. 2009, ch. 332 provided: "It is legislative intent, in light of changing consumption patterns relating to motor vehicle fuels, including gasohol, biodiesel and bio-

diesel blends, to review on an annual basis the distributions to the State Highway Account provided for in Sections 63-2412(1)(e) and 63-2418(3), Idaho Code."

Effective Dates.

Section 7 of S.L. 2009, ch. 332 declared an emergency effective on and after June 1, 2009. Approved May 12, 2009.

63-2408. Aircraft engine fuel tax. — (1) An excise tax is hereby imposed on all aircraft engine fuel received in this state. The tax is to be paid by the distributor, and measured by the total number of gallons received by him, at the rate of seven cents (7¢) per gallon of aviation gasoline, and six cents (6¢) per gallon of jet fuel. The tax, together with any penalty and/or interest due, shall be remitted with the monthly distributor's report required in section 63-2406, Idaho Code.

(2) For gasoline, other than aircraft engine fuel, used in aircraft engines, the refund of gasoline tax provided in section 63-2410, Idaho Code, shall be the amount of gasoline tax paid less the aviation gasoline fuel tax required in this section.

(3) A tax is hereby imposed on fuel which is placed into the fuel supply tank of aircraft in this state on which tax is not collected under subsection (1) of this section, the tax shall be payable at the rate established in subsection (1) of this section, to the commission by the user or consumer of the fuels and shall be a debt owing to the state until it is paid. The tax shall be imposed without regard to whether the fuel is used in the performance of a government contract.

History.

I.C., § 63-2408, as added by 1983, ch. 158, § 4, p. 436; am. 1991, ch. 306, § 2, p. 802; am.

1995, ch. 132, § 3, p. 565; am. 2008, ch. 31, § 1, p. 63.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 31, substituted “seven cents” for “five and one-half

cents” and “six cents” for “four and one-half cents” in the second sentence in subsection (1).

63-2411. Purchase of motor fuel by retail dealers. — It shall be unlawful for any retail dealer in motor fuel or for any person in the state of Idaho other than a licensed distributor to purchase, receive or accept any motor fuel from any other person, unless that person is a licensed distributor. Any person in violation of these provisions shall be guilty of a misdemeanor.

History.

I.C., § 63-2411, as added by 1983, ch. 158, § 4, p. 436; am. 2011, ch. 6, § 3, p. 14.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 6, substituted “motor fuel” for “gasoline” in the section heading, substituted “motor fuel” for “gasoline or

aircraft engine fuel” near the beginning of the first sentence, and substituted “motor fuel” for “gasoline” near the end of the first sentence.

63-2412. Distribution of tax revenues from tax on gasoline and aircraft engine fuel. — (1) The revenues received from the taxes imposed by sections 63-2402 and 63-2421, Idaho Code, upon the receipt or use of gasoline, and any penalties, interest, or deficiency additions, shall be distributed periodically as follows:

- (a) An amount of money equal to the actual cost of collecting, administering and enforcing the gasoline tax requirements by the commission, as determined by it shall be retained by the commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost of collecting, administering and enforcing the gasoline tax requirements by the commission at the end of each fiscal year shall be distributed as listed in paragraph (f) of this subsection.
- (b) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid from the state refund account and those moneys are hereby continuously appropriated for that purpose.
- (c) As soon as possible after the beginning of each fiscal year, the sum of two hundred fifty thousand dollars (\$250,000) shall be distributed to the railroad grade crossing protection account in the dedicated fund, to pay the amounts from the account pursuant to the provisions of section 62-304C, Idaho Code.
- (d) As soon as possible after the beginning of each fiscal year, the sum of one hundred thousand dollars (\$100,000) shall be distributed to the local bridge inspection account in the dedicated fund, to pay the amounts from the account pursuant to the provisions of section 40-703, Idaho Code.
- (e) An amount of money equal to seven percent (7%) shall be distributed to the state highway account established in section 40-702, Idaho Code.

(f) From the balance remaining with the commission after distributing the amounts in paragraphs (a) through (e) of subsection (1) of this section:

1. One and twenty-eight hundredths percent (1.28%) shall be distributed as follows: sixty-six percent (66%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed to the waterways improvement account, as created in chapter 15, title 57, Idaho Code. Up to twenty percent (20%) of the moneys distributed to the waterways improvement account under the provisions of this paragraph may be used by the department of parks and recreation to defray administrative costs. Any moneys unused at the end of the fiscal year by the department of parks and recreation shall be returned to the state treasurer for deposit in the waterways improvement account. Thirty-three percent (33%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed into the park and recreation capital improvement account as created in section 57-1801, Idaho Code. One percent (1%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed to the search and rescue fund created in section 67-2913, Idaho Code;

2. One and twenty-eight hundredths percent (1.28%) shall be distributed as follows: sixty-six percent (66%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed to the off-road motor vehicle account, as created in section 57-1901, Idaho Code. Up to twenty percent (20%) of the moneys distributed to the off-road motor vehicle account by this subparagraph may be used by the department of parks and recreation to defray administrative costs. Any moneys unused at the end of the fiscal year by the department of parks and recreation shall be returned to the state treasurer for deposit in the off-road motor vehicle account. Thirty-three percent (33%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed into the park and recreation capital improvement account as created in section 57-1801, Idaho Code. One percent (1%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed to the search and rescue fund created in section 67-2913, Idaho Code; and

3. Forty-four hundredths percent (.44%) shall be distributed to the park and recreation capital improvement account as created in section 57-1801, Idaho Code, to be used solely to develop, construct, maintain and repair roads, bridges and parking areas within and leading to parks and recreation areas of the state.

4. The balance remaining shall be distributed to the highway distribution account created in section 40-701, Idaho Code.

(2) The revenues received from the taxes imposed by section 63-2408, Idaho Code, and any penalties, interest, and deficiency amounts, shall be distributed as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid from the state refund account, and those moneys are hereby continuously appropriated.

(b) The balance remaining of all the taxes collected shall be distributed to the state aeronautics account, as provided in section 21-211, Idaho Code.

History.

I.C., § 63-2412, as added by 1983, ch. 158, § 4, p. 436; am. 1984, ch. 87, § 4, p. 169; am. 1984, ch. 195, § 35, p. 445; am. 1985, ch. 33, § 1, p. 66; am. 1985, ch. 253, § 9, p. 586; am. 1986, ch. 73, § 8, p. 277; am. 1986, ch. 99, § 3, p. 277; am. 1988, ch. 253, § 1, p. 487; am. 1990, ch. 395, § 1, p. 1106; am. 1991, ch. 120,

§ 2, p. 259; am. 1993, ch. 301, § 1, p. 1116; am. 1994, ch. 280, § 6, p. 867; am. 1994, ch. 315, § 3, p. 1001; am. 1997, ch. 50, § 1, p. 84; am. 2000, ch. 100, § 1, p. 220; am. 2000, ch. 186, § 3, p. 456; am. 2002, ch. 174, § 6, p. 508; am. 2009, ch. 332, § 2, p. 962; am. 2010, ch. 14, § 2, p. 14.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 332, substituted “paragraph (f)” for “paragraph (e)” near the end of paragraph (1)(a), added subsection (1)(e), and redesignated former subsection (1)(e) as subsection (1)(f).

Legislative Intent.

Section 6 of S.L. 2009, ch. 332 provided: “It is legislative intent, in light of changing consumption patterns relating to motor vehicle fuels, including gasohol, biodiesel and biodiesel blends, to review on an annual basis the distributions to the State Highway Account provided for in Sections 63-2412(1)(e) and 63-2418(3), Idaho Code.”

Compiler’s Notes.

Pursuant to S.L. 2009, ch. 333, § 7, as amended by S.L. 2010, ch. 129, § 1, this section was scheduled to be amended by S.L. 2009, ch. 333, § 4, effective July 1, 2011. However, S.L. 2009, ch. 233, § 4 was repealed by S.L. 2011, ch. 68, § 3, effective July 1, 2011, and never became operative. S.L. 2011, ch. 68 became law without the signature of the governor.

Effective Dates.

Section 7 of S.L. 2009, ch. 332 provided the act should take effect on and after July 1, 2009.

63-2418. Distribution of tax revenues from tax on special fuels. — The revenues received from the tax imposed by this chapter upon the receipt of special fuel and any penalties, interest or deficiency additions, or from the fees imposed by the commission under the provisions of section 63-2424 or 63-2438, Idaho Code, shall be distributed as follows:

(1) An amount of money equal to the actual cost of collecting, administering and enforcing the special fuels tax provisions by the commission, as determined by it shall be retained by the commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost of collecting, administering and enforcing the special fuels tax requirements by the commission at the end of each fiscal year shall be distributed to the highway distribution account.

(2) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid under this chapter shall be paid from the state refund account, those moneys being hereby continuously appropriated.

(3) An amount of money equal to seven percent (7%) shall be distributed to the state highway account as established in section 40-702, Idaho Code.

(4) The balance remaining with the commission after distributing the amounts specified in subsections (1), (2) and (3) of this section shall be distributed to the highway distribution account established in section 40-701, Idaho Code.

History.

I.C., § 63-2418, as added by 1983, ch. 158, § 4, p. 436; am. 1984, ch. 87, § 7, p. 169; am.

1984, ch. 195, § 36, p. 445; am. 1985, ch. 33, § 2, p. 66; am. 1985, ch. 253, § 10, p. 586; am. 1986, ch. 73, § 9, p. 201; am. 2000, ch. 155,

§ 3, p. 392; am. 2002, ch. 174, § 8, p. 508; am. 2009, ch. 332, § 3, p. 962; am. 2010, ch. 14, § 3, p. 14.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 332, added subsection (3) and redesignated former subsection (3) as subsection (4).

The 2010 amendment, by ch. 14, in subsection (4), inserted “and (3)” after “(2)”.

Legislative Intent.

Section 6 of S.L. 2009, ch. 332 provided: “It is legislative intent, in light of changing consumption patterns relating to motor vehicle fuels, including gasohol, biodiesel and bio-

diesel blends, to review on an annual basis the distributions to the State Highway Account provided for in Sections 63-2412(1)(e) and 63-2418(3), Idaho Code.”

Effective Dates.

Section 7 of S.L. 2009, ch. 332 provided the act should take effect on and after July 1, 2009.

Section 4 of S.L. 2010, ch. 14 declared an emergency retroactively to July 1, 2009. Approved February 24, 2010.

63-2421. Use tax — Returns and payment of use tax by consumers. — (1) For the privilege of using the highways of this state, any person, including a person described in paragraph (c) of subsection (1) of section 63-2427A, Idaho Code, who consumes motor fuels in a motor vehicle licensed or required to be licensed by the laws of this state, or which is required to be licensed under the laws of another jurisdiction and is operated on the highways of this state upon which the tax imposed by section 63-2402, Idaho Code, has not been paid or is subject to credit or refund under IFTA and which fuel is not exempted from tax by this chapter, shall be liable for the tax.

(2) Except for motor vehicles licensed under IFTA or operating with a temporary permit under section 49-432, Idaho Code, a person liable under subsection (1) of this section shall report the amount of tax liability and pay the taxes due in conjunction with his income or franchise tax return due under the provisions of chapter 30, title 63, Idaho Code, in the manner and form prescribed by the commission. Payment of motor fuels taxes shall be made in conjunction with any other taxes due on that return and motor fuels taxes due may be offset against refunds of any other taxes shown on the return to be due the taxpayer.

(3) In the case of a person liable under subsection (1) of this section other than one who consumes motor fuels in a motor vehicle described in the exception in subsection (2) of this section and not required to file a return under chapter 30, title 63, Idaho Code, the tax shall be paid annually, on a calendar year basis, in the manner and form required by the commission. The return and payment for each calendar year shall be due on or before April 15 of the immediately succeeding calendar year.

(4) In the case of a person liable under subsection (1) of this section whose motor vehicles are licensed or required to be licensed under IFTA as provided in sections 63-2438 and 63-2439, Idaho Code, or operating with a temporary permit under section 49-432, Idaho Code, the tax shall be paid in the manner required by those provisions.

History.

I.C., § 63-2421, as added by 1983, ch. 158,

§ 4, p. 436; am. 1992, ch. 106, § 5, p. 327; am. 1995, ch. 132, § 7, p. 565; am. 1997, ch. 86,

§ 2, p. 205; am. 2002, ch. 30, § 5, p. 37; am. 2002, ch. 174, § 9, p. 508; am. 2005, ch. 28, § 2, p. 139; am. 2009, ch. 21, § 2, p. 48.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 21, inserted “including a person described in paragraph (c)

of subsection (1) of section 63-2427A, Idaho Code” in subsection (1).

63-2423. Credits and refunds to consumers. — (1) Any person who has paid his special fuels tax directly to the distributor from whom it was purchased shall be refunded the amount of:

- (a) Except as provided in subsection (2) of this section, any special fuels tax paid on special fuels used for purposes other than operation or propulsion of motor vehicles upon the highways in the state of Idaho;
- (b) Any tax paid on special fuels used in motor vehicles owned or leased and operated by an instrumentality of the federal government or of the state of Idaho, including the state and all of its political subdivisions;
- (c) Any tax paid on gaseous special fuels placed into the main supply tank of a vehicle displaying a valid gaseous special fuels permit under section 63-2424, Idaho Code;
- (d) Any special fuels tax paid on special fuels exported for use outside the state of Idaho. Special fuels carried from the state in the fuel tank of a motor vehicle will not be deemed to be exported from the state unless it is subject to a like or similar tax in the jurisdiction to which it is taken and that tax is actually paid to the other jurisdiction; and
- (e) Any tax, penalty or interest erroneously or illegally paid or collected.

(2) No refund of special fuels tax shall be paid on:

- (a) Special fuels used in a recreational vehicle; or
- (b) Special fuels used in noncommercial motor boats or in motor boats operated by a governmental entity; or
- (c) Special fuels used while idling a registered motor vehicle, pursuant to the definition of “idling” as provided in section 63-2401, Idaho Code.

(3) Refunds authorized in this section shall be claimed in the same manner as applies to refunds of gasoline tax under section 63-2410, Idaho Code, and shall be subject to interest computed pursuant to subsection (5) of that section.

History.

I.C., § 63-2423, as added by 1983, ch. 158, § 4, p. 436; am. 1995, ch. 348, § 4, p. 1142; am. 1997, ch. 375, § 1, p. 1205; am. 1998, ch.

103, § 6, p. 353; am. 1998, ch. 196, § 2, p. 707; am. 2004, ch. 265, § 2, p. 745; am. 2011, ch. 6, § 4, p. 14; am. 2013, ch. 19, § 1, p. 29.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 6, substituted “distributor” for “vendor” in the introductory paragraph of subsection (1).

The 2013 amendment, by ch. 19, rewrote subsection (1)(c), which formerly read: “Any

tax paid on special fuels used in motor vehicles to which gaseous special fuel is delivered and which displays a valid gaseous special fuels permit under section 63-2424, Idaho Code.”

63-2424. Gaseous fuels. — (1) In the case of special fuels which are in a gaseous form, the commission shall provide by rule the method to be used for converting the measurement of the fuel to the equivalent of gallons for the purpose of applying tax rates. The method provided shall cause the tax rate provided in section 63-2402, Idaho Code, to apply to an amount of gaseous fuels having energy equal to one (1) gallon of gasoline.

(2) As an alternative to the provisions of subsection (1) of this section, an annual fee in lieu of the excise tax may be collected on a vehicle powered by gaseous fuels. The rate of the fee shall be based on the following schedule for all types of gaseous fuels as adjusted by the formula for proration set out below. The permits shall be sold by the state tax commission and gaseous fuels distributors dispensing gaseous fuels into motor vehicles.

VEHICLE TONNAGE (GVW)	FEE
0 — 8,000	\$ 60.00
8,001 — 16,000	\$ 89.00
16,001 — 26,000	\$179.00
26,001 and above	\$208.00

Permits for vehicles which are converted to gaseous fuels after the first of July in any year shall have the fee prorated for the appropriate number of months until renewal. The commission shall provide by rule the method to be used for converting the measurement of fuel to the equivalent of gallons for the purpose of applying increases in tax rates after this law becomes effective. A decal issued by the commission shall be displayed in any vehicle for which a permit is issued hereunder as evidence that the annual fee has been paid in lieu of the fuel tax. This decal shall be displayed in a conspicuous place.

History.
I.C., § 63-2424, as added by 1983, ch. 158, § 4, p. 436; am. 1991, ch. 334, § 1, p. 867; am. 1995, ch. 132, § 8, p. 565; am. 1998, ch. 103,

§ 7, p. 353; am. 2002, ch. 174, § 10, p. 508; am. 2011, ch. 6, § 5, p. 14; am. 2013, ch. 19, § 2, p. 29.

STATUTORY NOTES

Cross References.
State tax commission, Idaho Const., Art. VII, § 12 and § 63-101.

Amendments.
The 2011 amendment, by ch. 6, substituted “distributors” for “vendors” near the end of the first paragraph in subsection (2).
The 2013 amendment, by ch. 19, inserted “the state tax commission and” in the last sentence of the introductory paragraph of subsection (2).

63-2425. Dyed fuel and other untaxed fuel prohibited for use on a highway — Penalties. — (1) Except as provided in subsection (2) of this section, no person shall operate a motor vehicle on a highway in this state if the fuel supply tanks of the vehicle contain diesel fuel which has been dyed or marked under the provisions of 26 U.S.C. 4082 and regulations adopted thereunder, or under the clean air act and regulations adopted thereunder, or contain other motor fuel on which the tax under section 63-2402, Idaho Code, has not been paid.

(2) The following vehicles may use dyed fuel on the highway but are

subject to the tax under section 63-2402, Idaho Code, unless exempt under other provisions of this chapter:

- (a) State and local government vehicles;
- (b) Any vehicles which may use dyed fuel on the highway under the provisions of 26 U.S.C. 4082 or regulations adopted thereunder.
- (3) In addition to the provisions of section 63-2443, Idaho Code, any person violating the provisions of this section shall:
 - (a) Upon the first violation, be subject to a civil penalty in the amount of two hundred fifty dollars (\$250);
 - (b) Upon the second violation, be subject to a civil penalty in the amount of five hundred dollars (\$500); and
 - (c) Upon the third or subsequent violation, be subject to a civil penalty in the amount of one thousand dollars (\$1,000) for each such violation.

The commission may assess penalties under this subsection (3) as a deficiency in tax pursuant to sections 63-2434 and 63-3045, Idaho Code.

History.

I.C., § 63-2425, as added by 1995, ch. 348, § 5, p. 1142; am. 2002, ch. 174, § 11, p. 508; am. 2009, ch. 150, § 1, p. 439.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 150, added "penalties" in the section catchline and added subsection (3).

Federal References.

The clear air act, referred to in subsection (1), is codified as 42 U.S.C.S. § 7401 et seq.

63-2427A. Distributor's license. — (1) It is unlawful for a person to act as a distributor without a license unless the person:

- (a) Only purchases motor fuel on which any tax due under this chapter has previously been imposed upon a licensed distributor; or
- (b) Only purchases dyed fuel upon which the transfer fee imposed in section 41-4909, Idaho Code, has been imposed upon a licensed distributor; or
- (c) Only produces five thousand (5,000) gallons or less of biodiesel in a calendar year for that person's personal consumption.

(2) Application for a license shall be made upon forms furnished and in a manner prescribed by the commission and shall contain information as it deems necessary, and be accompanied by a bond in the amount required in section 63-2428, Idaho Code.

(3) Upon receipt of the application and bond in proper form the commission shall issue the applicant a license to act as a distributor unless the applicant:

- (a) Is a person who formerly held a license under the provisions of this chapter, any predecessor statute, under the laws of any other jurisdiction, or under the laws of the United States which license, prior to the time of filing this application, had been revoked for cause within five (5) years from the date of such application; or
- (b) Is a person who has outstanding fuel tax liabilities to this state, any other jurisdiction or the United States government; or
- (c) Is a person who has been convicted, under the laws of the United

States or any state or jurisdiction or subdivision thereof, of fraud, tax evasion, or a violation of the laws governing the reporting and payment of fees or taxes for petroleum products within five (5) years from the date of making such application; or

(d) Is a person who has been convicted of a felony or been granted a withheld judgment following an adjudication of guilt of a felony within five (5) years from the date of such application; or

(e) Who is not the real party in interest and the real party in interest is a person described in subsection (3)(a), (3)(b), (3)(c) or (3)(d) of this section.

(4) The commission shall not issue a distributor's license to any person until that person has submitted to the commission a consent to be sued in Idaho district court for purposes of the state enforcing any provision of this chapter. The consent shall be submitted in such form and include such information as the commission may by rule require.

(5) Upon approval of the application the distributor's license shall be valid until it is suspended or revoked for cause, for failure to maintain the bond required in section 63-2428, Idaho Code, for failure to file returns required in this chapter, for failure to pay all taxes and fees due with a return required in this chapter, or is otherwise canceled.

(6) No distributor's license shall be transferable.

(7) The commission shall furnish each licensed distributor with a list of all distributors licensed pursuant to this section. The list shall be supplemented by the commission from time to time to reflect additions and deletions.

History.

I.C., § 63-2427A, as added by 1995, ch. 132, § 9, p. 565; am. 2003, ch. 96, § 52, p. 281; am.

2007, ch. 288, § 3, p. 817; am. 2009, ch. 21, § 3, p. 48.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 21, in the introductory paragraph in subsection (1), deleted "only purchases fuel which is either or

both" from the end; at the beginning of subsections (1)(a) and (1)(b), added "Only purchases"; and added subsection (1)(c).

63-2429. Required records. — (1) Every distributor and every special fuels dealer and every person reporting, manufacturing, refining, dealing, transporting or storing motor fuels in this state shall keep records, receipts, invoices and other pertinent records as the commission may require. Records required and all other relevant books and records shall be available for inspection by the commission at all times during regular record keeper's business hours.

(2) Records required in subsection (1) of this section shall be kept for a period of three (3) years from the date on which the distributor's report or special fuels dealer's return to which they relate was required to be filed with the commission.

History.

I.C., § 63-2429, as added by 1983, ch. 158, § 4, p. 436; am. 2011, ch. 6, § 6, p. 14.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 6, substituted “storing motor fuels” for “storing gasoline,

aircraft engine fuel or special fuels” in the first sentence of subsection (1).

63-2430. Revocation or cancellation of license. — (1) The commission may revoke the license of a distributor or a carrier licensed in Idaho under the international fuel tax agreement in any of the following circumstances:

- (a) The licensee refuses or neglects to comply with the provisions of this chapter or rules of the commission promulgated pursuant to this chapter;
- (b) When, upon investigation, the commission ascertains or finds that the person to whom the license was issued is no longer engaged in business as a distributor or an Idaho IFTA carrier and has not been so engaged for a period of six (6) months prior to the cancellation; or
- (c) The licensee files a written request with the commission asking that the license be revoked and the commission determines, upon investigation, that the licensee is no longer a person required to be a licensed distributor or required to have an IFTA license.

(2) In the case of a cancellation under paragraph (c) of subsection (1) of this section, the cancellation shall not be effective nor shall the licensee’s surety be discharged from any bond unless the licensee has paid to the state of Idaho all taxes imposed under this chapter together with all penalties, interest and additional amounts which have accrued.

(3) In the case of revocation of a license under paragraph (a) or (b) of subsection (1) of this section, except those distributor’s licenses canceled as provided in section 63-2428(1), Idaho Code, prior to revoking the license the commission shall give notice of the proposed revocation to the licensee in the manner provided in section 63-3045, Idaho Code, which shall be subject to review as provided in section 63-3045, Idaho Code. If a petition for redetermination of the license revocation is not filed within the time period allowed, the determination becomes final as provided in section 63-3045B, Idaho Code. The state tax commission shall not issue a new license after the revocation of a license unless the state tax commission is satisfied that the former holder of the license has filed all returns and reported and paid all taxes, penalty and interest required by this chapter and corrected any other violations of this chapter upon which the revocation was based.

History.

I.C., § 63-2430, as added by 1983, ch. 158,

§ 4, p. 436; am. 1997, ch. 86, § 3, p. 205; am. 2011, ch. 4, § 1, p. 10.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 4, in subsection (3), inserted “except those distributor’s licenses canceled as provided in section 63-

2428(1), Idaho Code” in the middle of the first sentence and inserted “state tax” preceding the second occurrence of “commission” in the third sentence.

63-2431. Tax in lieu of all other taxes imposed. — The taxes imposed by this chapter shall be in lieu of all other excise taxes, license fees

or property taxes imposed upon motor fuels by this state or any political subdivision of this state.

History.

I.C., § 63-2431, as added by 1983, ch. 158,
§ 4, p. 436; am. 2011, ch. 6, § 7, p. 14.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 6, substituted “upon motor fuels” for “upon gasoline, aircraft engine fuel or special fuels.”

63-2436. Reports of importations by carrier — Contents. — The commission may require any railroad or other common carrier, or contract carrier, or any person, other than a licensee, who makes delivery in this state of any motor fuels to report in writing to the commission, not later than the last day of each calendar month, all the deliveries for the preceding calendar month. The commission may require information in the reports to include the place of origin and place of destination of the motor fuels delivered, the names and addresses of consignors and consignees, loading ticket numbers, number of gallons delivered, and any other information the commission may require.

History.

I.C., § 63-2436, as added by 1983, ch. 158, § 4, p. 436; am. 2001, ch. 104, § 3, p. 343; am. 2011, ch. 6, § 8, p. 14.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 6, twice substituted “motor fuels” for “gasoline, aircraft engine fuel or special fuels.”

CHAPTER 25**CIGARETTE AND TOBACCO PRODUCTS TAXES****SECTION.**

63-2502. Definitions.
63-2503. Permits.
63-2506. Imposition of tax.
63-2511. Records to be kept — Inspection.
63-2513. Contraband articles.
63-2516. Collection and enforcement — Actions against state of Idaho.
63-2520. Distribution of moneys collected.
[Effective until July 1, 2019.]

SECTION.

63-2520. Distribution of moneys collected.
[Effective July 1, 2019.]
63-2551. Tobacco products tax — Definitions.
63-2552A. Additional tax imposed — Rate.
63-2552B. Tobacco products use tax.
63-2563. Collection and enforcement.

63-2502. Definitions. — For the purpose of this act, unless otherwise required by the context:

(a) The word “wholesaler” means and includes every person who purchases, sells or distributes cigarettes to other wholesalers or to retailers for the purpose of resale and “delivery sellers” as defined in 15 U.S.C. section 375.

(b) The word “retailer” means every person, other than a wholesaler, who

purchases, sells, offers for sale, or distributes cigarettes at retail, irrespective of quantity or amount, or the number of sales.

(c) The phrase “wholesale sale” means a sale of cigarettes by a wholesaler to a retailer.

(d) The word “cigarette” shall be taken in the ordinary context of that word and shall be any roll for smoking, made wholly or in part of tobacco, where such roll has a wrapper or cover made of paper or any other material, except where such wrapper is wholly or in the greater part made of tobacco.

(e) The phrase “package of cigarettes” means the individual package, box, or other container in or from which retail sales of cigarettes are normally made or intended to be made. A package shall contain no less than twenty (20) cigarettes and be packaged in increments of five (5).

History.

1974, ch. 211, § 2, p. 1548; am. 1984, ch. 228, § 1, p. 547; am. 2011, ch. 2, § 1, p. 4.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 2, added “and ‘delivery sellers’ as defined in 15 U.S.C. section 375” at the end of subsection (a).

63-2503. Permits. — (1) It shall be unlawful for a person to act as a wholesaler of cigarettes without a permit. The permit shall be obtained by application to the state tax commission upon a form furnished by it, accompanied by a fee of fifty dollars (\$50.00). The wholesaler permit shall be nonassignable and shall continue in force until surrendered or canceled.

(2) It shall be unlawful for any retailer to purchase, sell, offer for sale, distribute, store or possess any cigarettes without first applying for and receiving a seller’s permit under section 63-3620, Idaho Code.

(3) A permit shall be held only by persons actively engaged in making wholesale sales of cigarettes. Any person not so engaged shall forthwith surrender his permit to the state tax commission for cancellation.

(4) Whenever any person fails to comply with any provision of this chapter relating to the purchase, sale or offering for sale or distribution of cigarettes or any rules of the state tax commission relating to the cigarette tax prescribed and adopted under this chapter, the state tax commission may revoke or suspend any permit held by the person or may deny a new permit to such person.

(5) The state tax commission may revoke the permit of a person not actively engaged in activities requiring a permit under this section.

(6) Notice of revocation shall be given in the manner provided for deficiencies in taxes in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.

(7) A permit, held by a person who for a period of twelve (12) consecutive months files reports showing no cigarette activity reportable under this chapter, shall expire automatically upon the state tax commission providing notice of the expiration to the last known address of the person to whom the permit was issued.

(8) A person who engaged in activities requiring a permit under this

section without a permit or after a permit has been revoked or suspended, and any person who is a responsible person, as defined in section 63-3627, Idaho Code, of such a business shall, after receiving written notice from the state tax commission, be subject to a civil penalty not in excess of one hundred dollars (\$100), and each day shall constitute a separate offense, which the state tax commission may assess as a deficiency pursuant to section 63-2516, Idaho Code.

History.

I.C., § 63-2503, as added by 1986, ch. 193, § 2, p. 489; am. 2006, ch. 60, § 2, p. 186; am.

2008, ch. 20, § 1, p. 31; am. 2013, ch. 5, § 1, p. 13.

STATUTORY NOTES

Cross References.

State tax commission, Idaho Const., Art. VII, § 12 and § 63-101.

tivity reportable under this chapter" for "reports no cigarette tax due under this chapter" in subsection (7).

Amendments.

The 2008 amendment, by ch. 20, substituted "files reports showing no cigarette ac-

The 2013 amendment, by ch. 5, deleted "subject to tax under this chapter" from the end of the first sentence in subsection (3).

JUDICIAL DECISIONS

Federal Preemption.

State's lawsuit against a company owned by a Native American for violations of this section and § 39-8403 was not subject to complete preemption by federal law because the

state has authority to impose taxes on cigarette sales between tribe members and non-members. *Idaho v. Native Wholesale Supply Co.*, Case No. 08-CV-396-S-EJL, 2009 U.S. Dist. LEXIS 28688 (D. Idaho Apr. 6, 2009).

63-2506. Imposition of tax. — (1) On and after July 1, 2005, a tax upon the purchase, storage, use, consumption, handling, distribution or wholesale sale of cigarettes is hereby imposed at the rate of fifty-seven cents (57¢) per package of twenty (20) cigarettes, which tax shall be paid by the wholesaler, and collected by the state tax commission. Beginning July 1, 2014, and every year thereafter, of the tax collected pursuant to this subsection, three million three hundred fifteen thousand dollars (\$3,315,000) shall be subject to appropriation to the public school income fund to be utilized to facilitate and provide substance abuse programs in the public school system. Beginning July 1, 2014, and every year thereafter, of the tax collected pursuant to this subsection, three million three hundred fifteen thousand dollars (\$3,315,000) shall be subject to appropriation to the department of juvenile corrections for distribution to the counties to be utilized for county juvenile probation services.

(2) Appropriated funds shall be distributed quarterly to the counties based upon the percentage the population of the county bears to the population of the state as a whole.

(3) The remaining moneys collected and those moneys not appropriated under the provisions of this section shall be distributed as specified in section 63-2520, Idaho Code.

History.

1974, ch. 211, § 6, p. 1548; am. 1987, ch.

254, § 1, p. 517; am. 1994, ch. 447, § 2, p. 1431; am. 1995, ch. 160, § 1, p. 637; am. 1995,

ch. 368, § 2, p. 1281; am. 1997, ch. 268, § 4, p. 769; am. 2003, ch. 362, § 1, p. 965; am. 2005, ch. 404, § 1, p. 1377; am. 2014, ch. 115, § 2, p. 328.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 115, substituted "Beginning July 1, 2014, and every year thereafter, of the tax collected pursuant to this subsection, three million three hundred

fifteen thousand dollars (\$3,315,000)" for "5.1746¢ of the tax collected per package of twenty (20) cigarettes" at the beginning the second and third sentences in subsection (1).

63-2511. Records to be kept — Inspection. — Each wholesaler of cigarettes shall keep and preserve for a period of four (4) years, records showing the purchase and sale of cigarettes, as well as separate invoices and records of stamps purchased. All records and stocks of cigarettes on hand shall be open to inspection by the state tax commission or authorized employees at all reasonable times. Additionally, the state tax commission may require reports to be submitted to it from time to time concerning the purchase and sale of cigarettes and stamps.

All retailers shall permit the state tax commission or authorized employees to inspect all cigarettes on hand.

History.

1974, ch. 211, § 11, p. 1548; am. 1986, ch.

193, § 6, p. 489; am. 2014, ch. 230, § 1, p. 590.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 230, deleted

"and vending machine operators" following "retailers" in the second paragraph.

63-2512. Penalties.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of sales, use, and utility taxes on retail

transactions of internet sellers and internet access providers. 30 A.L.R.6th 341.

63-2513. Contraband articles. — Any unstamped cigarettes held, owned, possessed or in control of any person for a period of time longer than necessary to affix Idaho stamps, are hereby declared to be contraband goods, except as authorized under subsection (b) of section 63-2512, Idaho Code, and may be seized by the state tax commission, or an employee of the state tax commission, or any peace officer, when directed by the state tax commission, without a warrant. Any vehicle, not a common carrier operating in interstate commerce, used in violating this act, shall likewise be subject to confiscation. Said cigarettes or vehicles seized shall be offered for sale. Fifteen (15) days' notice of the sale shall be given; net proceeds from the sale shall be deposited in the general fund. The state tax commission shall require the purchaser at the sale to affix the proper amount of tax stamps to cigarette packages.

History.

1974, ch. 211, § 13, p. 1548; am. 1976, ch. 175, § 1, p. 637; am. 1991, ch. 2, § 2, p. 13; am. 2011, ch. 2, § 2, p. 4.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 2, substituted "Idaho stamps, are hereby declared" for

"Idaho stamps, and hereby declared" in the first sentence.

63-2516. Collection and enforcement — Actions against state of Idaho. — In addition to the enforcement and penalty provisions in this act otherwise provided, the deficiency in tax and notice of deficiency as well as the collection and enforcement procedures provided by the Idaho income tax act, sections 63-3030A, 63-3038, 63-3039, 63-3040, 63-3042, 63-3043, 63-3044, 63-3045, 63-3045A, 63-3046, 63-3047, 63-3048 through 63-3065, 63-3068, 63-3071, 63-3073, 63-3075 and 63-3078, Idaho Code, shall apply and be available to the state tax commission for enforcement of the provisions of this act and the assessment and collection of any amounts due, and said sections shall for this purpose be considered a part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings they shall, when applied in enforcement or collection under this act, be described as cigarette tax liens and proceedings. Any reference to taxable year in the income tax act shall be, for the purposes of this act, considered a taxable period.

The state tax commission may be made a party defendant in an action at law or in equity by any person aggrieved by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final judgment secured against the state tax commission, and said judgment shall be paid as provided for payment of cigarette tax refunds.

History.

1974, ch. 211, § 16, p. 1548; am. 1986, ch. 193, § 8, p. 489; am. 2007, ch. 10, § 7, p. 10; am. 2014, ch. 230, § 2, p. 590.

STATUTORY NOTES**Cross References.**

Idaho income tax act, § 63-3001 et seq.

Amendments.

The 2014 amendment, by ch. 230, added the last sentence in the first paragraph.

Compiler's Notes.

The term "this act" in the last sentence in the first paragraph refers to S.L. 2014, ch. 230, which is compiled as §§ 63-2511, 63-2516, and 63-2563.

63-2520. Distribution of moneys collected. [Effective until July 1, 2019.] — Revenues received from the taxes imposed by this chapter, and any revenues received from licenses, permits, penalties, interest, or deficiency additions, shall be distributed by the state tax commission as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the state tax commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(b) On and after July 1, 2014, the balance remaining with the state

treasurer after deducting the amount described in subsection (a) of this section shall be distributed as follows:

(1) Five million dollars (\$5,000,000) shall be distributed to the permanent building fund created by section 57-1108, Idaho Code.

(2) One hundred twenty thousand dollars (\$120,000) shall be distributed to the central cancer registry fund and is subject to appropriation as provided for in chapter 35, title 67, Idaho Code.

(3) Three hundred thousand dollars (\$300,000) shall be distributed to the cancer control fund created by section 57-1702, Idaho Code, and is subject to appropriation as provided for in chapter 35, title 67, Idaho Code.

(4) An amount equal to the annual general fund appropriation for bond levy equalization, less the amount distributed under section 67-7434(1), Idaho Code, if applicable, pursuant to section 33-906, Idaho Code, shall be annually distributed to the general fund.

(5) All remaining moneys shall be distributed as follows: For fiscal years on and after July 1, 2006, all moneys shall be distributed to the permanent building fund with the moneys to be used for the repair, remodel and restoration of the state capitol building and state facilities pertaining to the capitol restoration until such time as the capitol restoration is adequately funded as certified by the director of the department of administration. Thereafter, all remaining moneys shall be distributed in the following priority order:

(i) Four million seven hundred thousand dollars (\$4,700,000) to be used for the purpose of paying the state match as required for federal funds committed to pay the annual scheduled GARVEE debt service until such time as the Idaho housing and finance association certifies that any such bonds or notes are adequately paid for, in accordance with chapter 62, title 67, Idaho Code;

(ii) Five million dollars (\$5,000,000) to the secondary aquifer planning, management and implementation fund as established in section 42-1780, Idaho Code. Such moneys shall be used for statewide aquifer stabilization; and

(iii) All remaining moneys following distributions pursuant to subparagraphs (i) and (ii) of this paragraph shall be distributed to the state highway account for the purpose of paying for the maintenance and repair (and including purchase of rights-of-way) of the state highway system.

History.

1974, ch. 211, § 20, p. 1548; am. 1975, ch. 57, § 1, p. 121; am. 1976, ch. 51, § 15, p. 152; am. 1978, ch. 182, § 1, p. 413; am. 1979, ch. 33, § 2, p. 48; am. 1980, ch. 1, § 1, p. 3; am. 1982, ch. 49, § 1, p. 74; am. 1984, ch. 146, § 1, p. 341; am. 1986, ch. 73, § 10, p. 201; am. 1987, ch. 254, § 2, p. 517; am. 1989, ch. 345,

§ 1, p. 872; am. 1994, ch. 45, § 2, p. 73; am. 1994, ch. 180, § 155, p. 420; am. 2000, ch. 60, § 2, p. 131; am. 2003, ch. 362, § 3, p. 965; am. 2005, ch. 404, § 3, p. 1377; am. 2006, ch. 311, § 11, p. 957; am. 2009, ch. 344, § 2, p. 1078; am. 2014, ch. 115, § 3, p. 328; am. 2014, ch. 337, § 2, p. 834.

STATUTORY NOTES

Repealed effective July 1, 2019. This section is repealed effective July 1, 2019,

pursuant to S.L. 2014, ch. 337, § 4, at which time a new § 63-2520 is enacted.

Cross References.

Central cancer registry fund, § 57-1701 et seq.

State refund account, § 63-3067.

Amendments.

The 2009 amendment, by ch. 344, in subsection (b)(2), substituted “central cancer registry fund” for “central tumor registry account” three times; and, in subsection (4), inserted “less the amount distributed under section 67-7434(2), Idaho Code, if applicable.”

This section was amended by two 2014 acts which appear to be compatible and have been compiled together.

The 2014 amendment, by ch. 115, rewrote the section to the extent that a detailed comparison is impracticable.

The 2014 amendment, by ch. 337, § 2, updated a reference in subsection (4) in light of the 2014 amendment of § 67-7434.

Compiler's Notes.

For this section as effective July 1, 2019, see the following section, also numbered § 63-2520.

S.L. 2009, Chapter 344 became law without the signature of the governor.

63-2520. Distribution of moneys collected. [Effective July 1, 2019.] — Revenues received from the taxes imposed by this chapter, and any revenues received from licenses, permits, penalties, interest, or deficiency additions, shall be distributed by the tax commission as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(b) On and after July 1, 2005, the balance remaining with the state treasurer after deducting the amount described in subsection (a) of this section shall be distributed as follows:

(1) 17.3% of such balance shall be distributed to the permanent building fund created by section 57-1108, Idaho Code.

(2) 0.4% of such balance shall be distributed to the central cancer registry fund. The amount of money so distributed to the central cancer registry fund shall not exceed the fiscal year's appropriation and, at such time as the appropriation has been distributed to the central cancer registry fund during any fiscal year, all such distributions in excess of the appropriation shall be made instead to the general fund of the state of Idaho.

(3) 1% of such balance shall be distributed to the cancer control account created by section 57-1702, Idaho Code. Revenues received in the cancer control account shall be paid over to the state treasurer by the state tax commission to be distributed as follows:

(i) Such amounts as are appropriated for purposes specified in section 57-1702, Idaho Code, shall be expended as appropriated;

(ii) Any balance remaining in the cancer control account on June 30 of any fiscal year, after the amounts withdrawn by appropriation have been deducted, shall be reserved for transfer to the general fund on July 1 and the state controller shall order such transfer.

(4) An amount equal to the annual general fund appropriation for bond levy equalization, less the amount distributed under section 67-7434(2), Idaho Code, if applicable, pursuant to section 33-906, Idaho Code, shall be annually distributed to the general fund.

(5) All remaining moneys shall be distributed as follows: For the fiscal year commencing July 1, 2005, and ending June 30, 2006, all moneys shall be distributed to the economic recovery reserve fund created by section

67-3520, Idaho Code. For fiscal years on and after July 1, 2006, all moneys shall be distributed to the permanent building fund with the moneys to be used for the repair, remodel and restoration of the state capitol building and state facilities pertaining to the capitol restoration until such time as the capitol restoration is adequately funded as certified by the director of the department of administration. Thereafter, all moneys shall be distributed to the economic recovery reserve fund created by section 67-3520, Idaho Code.

History.

I.C., § 63-2520, as added by 2014, ch. 337,
§ 6, p. 834.

STATUTORY NOTES**Cross References.**

Central cancer registry fund, § 57-1701 et
seq.

State refund account, § 63-3067.

2019, see the preceding section, also numbered § 63-2520.

Effective Dates.

Section 7 of S.L. 2014, ch. 337 provided that this section should take effective on and after July 1, 2019.

Compiler's Notes.

For this section as effective until July 1,

63-2551. Tobacco products tax — Definitions. — As used in this act:

(1) "Tobacco products" shall mean any cigars, cheroots, stogies, smoking tobacco (including granulated, plug, cut, crimp cut, ready rubbed and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including cavendish, twist, plug, scrap and any other kinds and forms of tobacco suitable for chewing) and snuff, however prepared; and shall include any other articles or products made of tobacco except cigarettes;

(2) "Manufacturer" means a person who manufactures and sells tobacco products;

(3) "Distributor" means (a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, (b) any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state, (c) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers;

(4) "Subjobber" means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers;

(5) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers;

(6) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of this chapter, or for any other purposes whatsoever;

(7) "Wholesale sales price" means the established price for which a manufacturer or any person sells a tobacco product to a distributor that is

not a related person as defined in section 267 of the Internal Revenue Code, exclusive of any discount or other reduction;

(8) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state;

(9) "Place of business" means any place where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane or train;

(10) "Retail outlet" means each place of business from which tobacco products are sold to consumers;

(11) "Commission" means the Idaho state tax commission.

History.

1972, ch. 289, § 1, p. 725; am. 2008, ch. 20, § 2, p. 31; am. 2011, ch. 2, § 3, p. 4.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 20, inserted "that is not a related person as defined in section 267 of the Internal Revenue Code" in subsection (7).

The 2011 amendment, by ch. 2, deleted "or any substitute therefor" preceding "except cigarettes" near the end of subsection (1);

inserted "or any person" in subsection (7); and deleted "or vending machine" from the end of subsection (9).

Federal References.

Section 267 of the Internal Revenue Code, referred to in subsection (7), is codified as 26 U.S.C.S. § 267.

63-2552A. Additional tax imposed — Rate. — (1) In addition to the tax imposed in section 63-2552, Idaho Code, from and after July 1, 1994, there is levied and there shall be collected an additional tax upon the sale, use, consumption, handling, or distribution of all tobacco products in this state at the rate of five percent (5%) of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor:

- (a) Brings, or causes to be brought, into this state from without the state tobacco products for sale;
- (b) Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or
- (c) Ships or transports tobacco products to retailers in this state to be sold by those retailers.

(2) Each distributor, within twenty (20) days after July 1, 1994, shall file a report with the commission, in such form as the commission may prescribe, showing the tobacco products on hand on July 1, 1994, and the amount of tax due thereon. The tax imposed in this subsection shall be due and payable within twenty (20) days after July 1, 1994, and thereafter shall bear interest at the rate of one percent (1%) per month.

(3) Fifty percent (50%) of the tax collected pursuant to this section shall be subject to appropriation to the public school income fund to be utilized to develop and implement school safety improvements and to facilitate and provide substance abuse prevention programs in the public school system, less two hundred thousand dollars (\$200,000) that shall be remitted annually to the Idaho state police to increase toxicology lab capacity in the bureau of forensic services for drug testing of juveniles, and less eighty

thousand dollars (\$80,000) that shall be remitted to the commission on Hispanic affairs to be used for substance abuse prevention efforts in collaboration with the state department of education. Fifty percent (50%) of the tax collected pursuant to this section shall be subject to appropriation to the department of juvenile corrections for distribution quarterly to the counties to be utilized for county juvenile probation services, based upon the percentage the population of the county bears to the population of the state as a whole. The moneys remitted to the Idaho state police shall be reviewed annually and any money excess to the operations needs of the laboratory for juvenile drug testing will be deposited in the public school income fund for substance abuse prevention programs in the public school system. The laboratory may utilize this increased toxicology capacity for adult drug testing to the extent that timely testing for juveniles is not adversely impacted.

History.

I.C., § 63-2552A, as added by 1994, ch. 447, § 3, p. 1431; am. 1995, ch. 160, § 2, p. 651; am. 1995, ch. 368, § 3, p. 1281; am. 1996, ch.

261, § 4, p. 857; am. 1997, ch. 268, § 5, p. 769; am. 2000, ch. 469, § 131, p. 1450; am. 2014, ch. 325, § 2, p. 805.

STATUTORY NOTES**Cross References.**

Department of juvenile corrections, § 20-503.

subsection (3), relating to the use of appropriations to the public school income fund.

Amendments.

The 2014 amendment, by ch. 325, rewrote

63-2552B. Tobacco products use tax. — Any person who does not hold a tobacco products tax permit who possesses, purchases or consumes tobacco products upon which tax imposed by this chapter has not been paid, including tobacco products sold by internet, catalog, telephone and facsimile sellers, is liable for the taxes imposed by sections 63-2552 and 63-2552A, Idaho Code, to be reported and paid as required in section 63-2560, Idaho Code.

History.

I.C., § 63-2552B, as added by 2008, ch. 20, § 3, p. 32.

63-2563. Collection and enforcement. — The collection and enforcement procedures provided by the Idaho income tax act, sections 63-3038, 63-3039, 63-3042 through 63-3045A, 63-3047 through 63-3065A, 63-3068, 63-3071, 63-3075 and 63-3078, Idaho Code, shall apply and be available to the commission for the enforcement of this act and collection of any amounts due under this act and said sections shall, for this purpose, be considered part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under this act, be described as tobacco products tax liens and proceedings. Any reference to taxable year in the income tax act shall be, for the purposes of this act, considered a taxable period.

The state tax commission may be made a party defendant in an action at law or in equity by any person aggrieved by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final judgment secured against the state tax commission, and said judgment shall be paid or satisfied out of the tobacco products tax refund fund.

History.

I. C., § 63-2563, as added by 1974, ch. 173,

§ 3, p. 1432; am. 2007, ch. 10, § 8, p. 10; am.

2014, ch. 230, § 3, p. 590.

STATUTORY NOTES**Cross References.**

Idaho income tax act, § 63-3001 et seq.

Compiler's Notes.

The term "this act" near the end of the first paragraph refers to S.L. 2014, ch. 230, which is compiled as §§ 63-2511, 63-2516, and 63-2563.

Amendments.

The 2014 amendment, by ch. 230, added the last sentence in the first paragraph.

CHAPTER 26

COUNTY SALES TAX

SECTION.

63-2601. Legislative findings. [Null and void.]

63-2602. Authority for county sales or use tax. [Null and void.]

63-2603. County property tax relief fund. [Null and void.]

SECTION.

63-2604. General provisions. [Null and void.]

63-2605. Collection and administration of local option sales or use taxes by the state tax commission — Distribution. [Null and void.]

63-2601. Legislative findings. [Null and void.]

Null and void, pursuant to Section 4 of S.L. 2009, ch. 363, effective December 31, 2009.

History.

I.C., § 63-2601, as added by 2003, ch. 363, § 2, p. 969.

63-2602. Authority for county sales or use tax. [Null and void.]

Null and void, pursuant to Section 4 of S.L. 2009, ch. 363, effective December 31, 2009.

History.

I.C., § 63-2602, as added by 2003, ch. 363, § 2, p. 969.

63-2603. County property tax relief fund. [Null and void.]

Null and void, pursuant to Section 4 of S.L. 2009, ch. 363, effective December 31, 2009.

History.

I.C., § 63-2603, as added by 2003, ch. 363, § 2, p. 969.

63-2604. General provisions. [Null and void.]

Null and void, pursuant to Section 4 of S.L. 2009, ch. 363, effective December 31, 2009.

History.

I.C., § 63-2604, as added by 2003, ch. 363,
§ 2, p. 969.

63-2605. Collection and administration of local option sales or use taxes by the state tax commission — Distribution. [Null and void.]

Null and void, pursuant to Section 4 of S.L. 2009, ch. 363, effective December 31, 2009.

History.

I.C., § 63-2605, as added by 2003, ch. 363,
§ 2, p. 969.

CHAPTER 29**THE IDAHO CORPORATE HEADQUARTERS
INCENTIVE ACT OF 2005****SECTION.**

63-2901 — 63-2910. [Repealed.]

63-2901. Short title. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 63-

2901, as added by 2005, ch. 369, § 1, p. 1169,
was repealed by S.L. 2008, ch. 390, § 1.

63-2902. Definitions. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 63-
2902, as added by 2005, ch. 369, § 1, p. 1169;

am. 2007, ch. 360, § 21, p. 1061, was repealed
by S.L. 2008, ch. 390, § 1.

63-2903. Additional income tax credit for capital investment. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 63-

2903, as added by 2005, ch. 369, § 1, p. 1169,
was repealed by S.L. 2008, ch. 390, § 1.

63-2904. Real property improvement tax credit. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 63-

2904, as added by 2005, ch. 369, § 1, p. 1169, was repealed by S.L. 2008, ch. 390, § 1.

63-2905. Additional income tax credit for new jobs. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 63-

2905, as added by 2005, ch. 369, § 1, p. 1169, was repealed by S.L. 2008, ch. 390, § 1.

63-2906. Limitations, and other provisions on credits against income taxes. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 63-2906, as added by 2005, ch. 369, § 1, p. 1169;

am. 2006, ch. 195, § 6, p. 599, was repealed by S.L. 2008, ch. 390, § 1.

63-2907. Recapture. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 63-

2907, as added by 2005, ch. 369, § 1, p. 1169, was repealed by S.L. 2008, ch. 390, § 1.

63-2908. Sales and use tax incentives — Rebates — Recapture. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 63-

2908, as added by 2005, ch. 369, § 1, p. 1169, was repealed by S.L. 2008, ch. 390, § 1.

63-2909. Property tax incentives. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 63-2909, as added by 2005, ch. 369, § 1, p. 1169;

am. 2006, ch. 59, § 3, p. 183, was repealed by S.L. 2008, ch. 390, § 1.

63-2910. Administration. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 63-

2910, as added by 2005, ch. 369, § 1, p. 1169, was repealed by S.L. 2008, ch. 390, § 1.

CHAPTER 30

INCOME TAX

SECTION.

- 63-3004. Internal Revenue Code.
- 63-3006A. Limited liability company — Classification and taxation.
- 63-3006C. Pass-through entity.
- 63-3015. Estates and trusts.
- 63-3021. Net operating loss.
- 63-3021A. Calculation of net operating loss when taxable income is determined by excess inclusion income.
- 63-3022. Adjustments to taxable income.
- 63-3022A. Deduction of certain retirement benefits.
- 63-3022B. Deduction for energy efficiency upgrades.
- 63-3022H. Deduction of capital gains.
- 63-3022J. Deduction of value for technological equipment.
- 63-3022K. Medical savings account.
- 63-3022L. Individuals who are owners of an interest in a pass-through entity or beneficiaries of a trust or estate.
- 63-3022O. Adjustment — Property acquired after September 10, 2001 — Small business expenses — Limitations on assessments and refunds.
- 63-3022R. Certain loss recoveries.
- 63-3022S. Income earned on an Indian reservation.
- [63-3022T] 63-3022S. Relief from joint and several liability on joint return.
- 63-3024. Individuals' tax and tax on estates and trusts.
- 63-3024A. Food tax credits and refunds.
- 63-3025. Tax on corporate income.
- 63-3025B. Organizations exempt from the tax imposed by this chapter.
- 63-3026A. Computing Idaho taxable income of part-year or nonresident individuals, trusts and estates.
- 63-3027. Computing Idaho taxable income of multistate or unitary corporations.
- 63-3027B. Water's-edge election.
- 63-3029. Credit for income taxes paid another state.
- 63-3029A. Income tax credit for charitable contributions — Limitation. [Effective until January 1, 2016.]
- 63-3029A. Income tax credit for charitable contributions — Limitation. [Effective January 1, 2016.]

SECTION.

- 63-3029B. Income tax credit for capital investment.
- 63-3029E. Definitions — Construction of terms. [Null and void, effective January 1, 2017.]
- 63-3029F. Special credit available — New employees. [Null and void.]
- 63-3029G. Credits for research activities conducted in this state — Carry forward.
- 63-3029I. Income tax credit for investment in broadband equipment.
- 63-3029EE. Special credit available — New employees. [Null and void, effective January 1, 2017.]
- 63-3033. Extension of time.
- 63-3035. State withholding tax on percentage basis — Withholding, collection and payment of tax.
- 63-3036B. Pass-through entities — Backup withholding.
- 63-3037. Information returns.
- 63-3045. Notice of redetermination or deficiency — Interest.
- 63-3047. Compromised cases.
- 63-3048. Adjusted or compromised cases — Settlement and closing agreements.
- 63-3060A. Continuous execution on individual earnings.
- 63-3061A. Notice of levy and distraint.
- 63-3067. Revenue received — State refund account.
- 63-3067A. Designation by individuals — Trust accounts.
- 63-3067B. Designation by individuals — Trust accounts.
- 63-3067D. Designation by taxpayer — Opportunity scholarship.
- 63-3068. Period of limitations for issuing a notice of deficiency and collection of tax.
- 63-3071. Destruction of old returns.
- 63-3072. Credits and refunds.
- 63-3077E. Agreements for exchange of information with the state treasurer.
- 63-3077F. Information furnished to certain individuals.
- 63-3082. Additional tax required when filing income tax return.
- 63-3083. "Person" defined.
- 63-3088. Designation by individuals. [Repealed.]

63-3002. Declaration of intent.

JUDICIAL DECISIONS

Equitable Relief.

This section does not explicitly state that the state should adopt federal provisions for equitable relief from tax liability, and has been read as not requiring adoption of every federal tax procedure. The supreme court has declined to adopt federal procedures when

those procedures conflict with prescriptions in Idaho law. Sections 63-3047 and 63-3048 provide a mechanism by which the Idaho state tax commission may grant equitable relief. *Parker v. Idaho State Tax Comm'n*, 148 Idaho 842, 230 P.3d 734 (2010).

63-3004. Internal Revenue Code. — (a) The term “Internal Revenue Code” means the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January 2014.

(b) Provisions of the Internal Revenue Code amended, deleted, or added prior to the effective date of the latest amendment to this section shall be applicable for Idaho income tax purposes on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

(c) For all purposes of the Idaho income tax act, a marriage must be one that is considered valid or recognized under section 28, article III, of the constitution of the state of Idaho and defined in section 32-201, Idaho Code, or as recognized under section 32-209, Idaho Code.

History.

1959, ch. 299, § 4, p. 613; am. 1961, ch. 328, § 1, p. 622; am. 1963, ch. 339, § 1, p. 971; am. 1965, ch. 316, § 1, p. 880; am. 1967, ch. 294, § 1, p. 828; am. 1969, ch. 319, § 2, p. 982; am. 1970, ch. 222, § 2, p. 621; am. 1971, ch. 302, § 1, p. 1242; am. 1972, ch. 398, § 1, p. 1149; am. 1973, ch. 44, § 1, p. 79; am. 1974, ch. 56, § 1, p. 1118; am. 1975, ch. 12, § 1, p. 17; am. 1976, ch. 3, § 1, p. 12; am. 1977, ch. 1, § 1, p. 3; am. 1978, ch. 138, § 1, p. 313; am. 1979, ch. 255, § 1, p. 678; am. 1981, ch. 80, § 1, p. 113; am. 1982, ch. 11, § 1, p. 16; am. 1983, ch. 97, § 1, p. 209; am. 1984, ch. 35, § 1, p. 55; am. 1985, ch. 131, § 1, p. 326; am. 1986, ch. 11, § 1, p. 53; am. 1987, ch. 93, § 1, p. 176; am. 1988, ch. 2, § 1, p. 3; am. 1988, ch. 373, § 1, p. 1107; am. 1989, ch. 7, § 1, p. 8; am. 1990, ch.

34, § 1, p. 49; am. 1991, ch. 7, § 1, p. 18; am. 1991, ch. 55, § 1, p. 99; am. 1992, ch. 5, § 1, p. 10; am. 1993, ch. 1, § 1, p. 3; am. 1994, ch. 38, § 1, p. 56; am. 1995, ch. 79, § 1, p. 209; am. 1996, ch. 24, § 1, p. 59; am. 1997, ch. 19, § 1, p. 29; am. 1998, ch. 52, § 1, p. 206; am. 1999, ch. 27, § 1, p. 39; am. 2000, ch. 16, § 1, p. 32; am. 2001, ch. 58, § 1, p. 110; am. 2002, ch. 59, § 1, p. 127; am. 2003, ch. 350, § 1, p. 937; am. 2004, ch. 20, § 1, p. 22; am. 2005, ch. 14, § 1, p. 41; am. 2006, ch. 242, § 1, p. 736; am. 2007, ch. 13, § 1, p. 24; am. 2008, ch. 6, § 1, p. 7; am. 2008, ch. 319, § 1, p. 882; am. 2009, ch. 35, § 1, p. 105; am. 2009, ch. 228, § 1, p. 711; am. 2011, ch. 1, § 1, p. 3; am. 2012, ch. 2, § 1, p. 4; am. 2013, ch. 1, § 1, p. 3; am. 2014, ch. 10, § 1, p. 13.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 6, substituted “2008” for “2007” in subsection (b).

The 2008 amendment, by ch. 319, substituted “fourteenth day of February, 2008” for “first day of January, 2008” in subsection (a).

The 2009 amendment, by ch. 35, in subsection (a), substituted “first day of January, 2009” for “fourteenth day of February, 2008”; and added subsection (c).

The 2009 amendment, by ch. 228, in subsection (a), substituted “seventeenth day of February, 2009” for “first day of January,

2009”; and deleted subsection (c), which read: “Notwithstanding the provisions of section 63-3022(j), Idaho Code, the provisions of section 3012 of Public Law 110-289, ‘The Housing and Economic Recovery Act of 2008’ providing an additional standard deduction for real property taxes for individuals who do not itemize their deductions are adopted under subsections (a) and (b) of this section”.

The 2011 amendment, by ch. 1, substituted “first day of January, 2011” for “seventeenth day of February, 2009” at the end of subsection (a).

The 2012 amendment, by ch. 2, substituted “January, 2012” for “January, 2011” at the end of subsection (a).

The 2013 amendment, by ch. 1, substituted “January, 2013” for “January, 2012” at the end of subsection (a).

The 2014 amendment, by ch. 10, substituted “January 2014” for “January, 2013” in subsection (a) and added subsection (c).

Federal References.

The Internal Revenue Code of 1986, referred to in this section is compiled as 26 U.S.C.S. § 1 et seq.

Compiler's Notes.

Section 2 of S.L. 2014, ch 10 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates.

Section 2 of S.L. 2008, ch. 6 declared an emergency retroactively to January 1, 2008 and approved February 8, 2008.

Section 4 of S.L. 2008, ch. 319 declared an emergency retroactively to January 1, 2008 and approved March 31, 2008.

Section 2 of S.L. 2009, ch. 35 declared an emergency retroactively to January 1, 2009, except for the provisions of subsection (c) of section 63-3004, which is retroactive to January 1, 2008. Approved March 17, 2009.

Section 2 of S.L. 2009, ch. 228 declared an emergency retroactively to January 1, 2009 and approved April 23, 2009.

Section 3 of S.L. 2011, ch. 1 declared an emergency retroactively to January 1, 2010. Approved February 11, 2011.

Section 2 of S.L. 2012, ch. 2 declared an emergency and made this section retroactive to January 1, 2012. Approved February 6, 2012.

Section 2 of S.L. 2013, ch. 1 declared an emergency and made this section retroactive to January 1, 2013; provided however, refund claims arising under Section 1106 of the FAA Modernization and Reform Act (P.L. 112-95) may be filed on or before the later of the date permitted in Section 63-3072, Idaho Code, or April 15, 2013. Approved February 4, 2013.

Section 3 of S.L. 2014, ch. 10 declared an emergency and made this section retroactive to January 1, 2014.

63-3006A. Limited liability company — Classification and taxation. — Notwithstanding the provisions of section 63-3006, Idaho Code, for the purposes of chapter 30, title 63, Idaho Code, a limited liability company as defined in subsection (5) or (6) of section 53-601, Idaho Code, or as defined in section 30-6-102, Idaho Code, as appropriate pursuant to section 30-6-1104, Idaho Code, shall be classified as a partnership, corporation, unincorporated association or otherwise pursuant to the provisions of the internal revenue code. A limited liability company that is classified as a partnership pursuant to the internal revenue code shall be treated as a partnership for purposes of chapter 30, title 63, Idaho Code. A limited liability company that is classified other than a partnership pursuant to the internal revenue code shall be treated for purposes of chapter 30, title 63, Idaho Code, in accordance with its classification.

History.

I.C., § 63-3006A, as added by 1993, ch. 224, § 2, p. 760; am. 2008, ch. 176, § 3, p. 520.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 176, inserted “or as defined in section 30-6-102, Idaho Code,

as appropriate pursuant to section 30-6-1104, Idaho Code” in the first sentence.

63-3006C. Pass-through entity. — The term “pass-through entity” as used in this chapter includes a partnership, as defined in section 63-3006B, Idaho Code, a limited liability company taxed as a partnership under section

63-3006A, Idaho Code, an S corporation required to file a return under section 63-3030(4), Idaho Code, or a trust or estate required to file a return under section 63-3030, Idaho Code. An "owner of an interest in a pass-through entity" includes the shareholders of a corporation, the members of a limited liability company and partners of a partnership.

History.

I.C., § 63-3006C, as added by 2010, ch. 37,
§ 1, p. 67.

STATUTORY NOTES**Effective Dates.**

Section 4 of S.L. 2010, ch. 37 provided that the act should take effect on and after January 1, 2011.

63-3015. Estates and trusts. — (1) An estate is treated as a resident estate if the decedent was a resident of Idaho on the date of death.

(2) A trust, other than a qualified funeral trust, is treated as a resident trust if three (3) or more of the following conditions existed for the entire taxable year:

- (a) The domicile or residency of the grantor is in Idaho;
- (b) The trust is governed by Idaho law;
- (c) The trust has real or tangible personal property located in Idaho;
- (d) The domicile or residency of the trustee is in Idaho;
- (e) The administration of the trust takes place in Idaho. Administration of the trust includes conducting trust business, investing trust assets, making administrative decisions, recordkeeping and preparation and filing of tax returns.

(3) A trust, other than a qualified funeral trust, is treated as a part-year resident trust each day of the taxable year during which three (3) or more of the conditions specified in subsection (2) of this section existed.

(4) A qualified funeral trust is treated as a resident trust if its trustee has elected treatment as a qualified funeral trust pursuant to section 685 of the Internal Revenue Code where, at the time of the initial funding of the trust, the trust is required to be established under the laws of this state or, in the absence of such a requirement, where a funeral home or cemetery located in this state is identified to provide the services or merchandise, or both, under the terms of a preneed contract requiring the establishment of the trust.

(5) Qualified funeral trusts having a single trustee may file a single, composite return pursuant to rules of the state tax commission. Each beneficiary's interest in a qualified funeral trust included in the composite return under this section shall be taxed as a separate trust for the purposes of application of the rate schedules in section 63-3024, Idaho Code, and determination of the filing requirement in section 63-3030, Idaho Code. The composite return shall not be a return of a person under section 63-3082, Idaho Code.

(6) If the estate does not qualify as a resident estate, it is treated as a nonresident estate.

(7) If the trust does not qualify as a resident or part-year resident trust, it is treated as a nonresident trust.

(8) For purposes of determining residency status of a trust, no distinction is made between inter vivos trusts and testamentary trusts or between revocable trusts and irrevocable trusts.

History.

I.C., § 63-3015, as added by 2002, ch. 36,
§ 1, p. 82; am. 2014, ch. 25, § 1, p. 32.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 25, rewrote the section heading which formerly read: "Qualified Funeral Trusts"; inserted present subsections (1) through (3); redesignated former subsections (1) and (2) as present subsections (4) and (5); substituted "A qualified funeral trust is treated as a resident trust if its" for "A resident of this state includes a

trust whose" at the beginning of present subsection (4); and added subsections (6) through (8).

Federal References.

Section 685 of the Internal Revenue Code, referred to in subsection (4), is codified as 26 U.S.C. § 684.

63-3021. Net operating loss. — (a) The term "net operating loss" means the amount by which Idaho taxable income, after making the modifications specified in subsection (b) of this section, is less than zero (0).

(b) Add the following amounts:

(1) The amount of any net operating loss deduction included in Idaho taxable income.

(2) In the case of a taxpayer other than a corporation:

(i) Any amount deducted due to losses in excess of gains from sales or exchanges of capital assets; and

(ii) Any deduction for long-term capital gains provided by this chapter.

(3) Any deduction allowed under section 151 of the Internal Revenue Code (relating to personal exemption) or any deduction in lieu of any such deduction.

(4) Any deduction for the standard or itemized deductions provided for in section 63 of the Internal Revenue Code, or section 63-3022(j), Idaho Code, except for any deduction allowable under section 165(c)(3) of the Internal Revenue Code (relating to casualty losses) pertaining to property physically located inside Idaho at the time of the casualty.

(c) Subject to the provisions of sections 381 and 382, Internal Revenue Code, Idaho net operating losses incurred by a corporation will survive a merger.

(1) Changes in the location of a loss corporation's business or its key employees shall not be treated as a failure to satisfy the continuity of business requirements.

(2) If the premerger corporation conducted operations in Idaho and at least one (1) other state, the section 382, Internal Revenue Code, loss limitation is limited further by the premerger loss corporation's Idaho apportionment factor for the last taxable year preceding the date of the merger.

History.

I.C., § 63-3021, as added by 1989, ch. 27,

§ 2, p. 32; am. 1992, ch. 11, § 2, p. 17; am. 1995, ch. 111, § 8, p. 347; am. 1998, ch. 42,

§ 1, p. 175; am. 2000, ch. 38, § 3, p. 70; am. 2010, ch. 11, § 1, p. 12.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 11, added subsection (c).

Federal References.

Section 151 of the Internal Revenue Code, referred to in paragraph (b)(3), is codified as 26 U.S.C.S. § 151.

Section 63 of the Internal Revenue Code,

referred to in paragraph (b)(4), is codified as 26 U.S.C.S. § 63.

Section 165(c)(3) of the Internal Revenue Code, referred to in paragraph (4), is codified as 26 U.S.C.S. § 165(c)(3).

Effective Dates.

Section 2 of S.L. 2010, ch. 11 declared an emergency retroactively to January 1, 2010 and approved February 23, 2010.

63-3021A. Calculation of net operating loss when taxable income is determined by excess inclusion income. — When, pursuant to section 63-3011B, Idaho Code, taxable income for any tax year is determined by the amount of excess inclusion income taxable as determined by Internal Revenue Code section 860E, and when the taxpayer would incur a net operating loss or would be entitled to carry forward a net operating loss pursuant to section 63-3022, Idaho Code, except for the effect of the excess inclusion income reported for that tax year, the net operating loss incurred in that tax year or carried forward from an earlier tax year may be taken as deductions in other tax years, subject to the provisions of subsections (b) and (c) of section 63-3022, Idaho Code. In computing the net operating loss that may be used in another tax year, the excess inclusion income recognized as taxable income shall be deducted from gross income or taxable income, as provided by treasury regulation 1.860E-1(a)(1).

History.

I.C., § 63-3021A, as added by 2014, ch. 74, § 1, p. 192.

STATUTORY NOTES

Federal References.

Section 860E of the Internal Revenue Code, referred to in the first sentence, is codified as 26 U.S.C.S. § 860E.

Effective Dates.

Section 3 of S.L. 2014, ch. 74 declared an emergency and made this section retroactive to January 1, 2014.

63-3022. Adjustments to taxable income. — The additions and subtractions set forth in this section, and in sections 63-3022A through 63-3022R, Idaho Code, are to be applied to the extent allowed in computing Idaho taxable income:

(a) Add any state and local taxes, as defined in section 164 of the Internal Revenue Code that are measured by net income, or for which a credit is allowable under section 63-3029, Idaho Code, and paid or accrued during the taxable year adjusted for state or local tax refunds used in arriving at taxable income.

(b) Add the net operating loss deduction used in arriving at taxable income.

(c)(1) A net operating loss for any taxable year commencing on and after

January 1, 2000, but before January 1, 2013, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars (\$100,000) to the two (2) immediately preceding taxable years. At the election of the taxpayer, the two (2) year carryback may be foregone and the loss subtracted from income received in taxable years arising in the next twenty (20) years succeeding the taxable year in which the loss arises in order until exhausted. The election shall be made as under section 172(b)(3) of the Internal Revenue Code. An election under this subsection must be in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the year in which it is made.

(2) A net operating loss for any taxable year commencing on or after January 1, 2013, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars (\$100,000) to the two (2) immediately preceding taxable years only if an amended return carrying the loss back is filed within one (1) year of the end of the taxable year of the net operating loss that results in such carryback.

(3) Any portion of the net operating loss not subtracted from income in the two (2) preceding years may be subtracted from income in the next twenty (20) years succeeding the taxable year in which the loss arises in order until exhausted. The sum of the deductions may not exceed the amount of the net operating loss deduction incurred. The carryback shall be limited to a total of fifty thousand dollars (\$50,000) in the case of an individual filing as married filing separate in the year of the loss.

(4) Net operating losses incurred by a corporation during a year in which such corporation did not transact business in Idaho or was not included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, may not be subtracted. However, if at least one (1) corporation within a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred, then the net operating loss may be subtracted. Net operating losses incurred by a person, other than a corporation, in activities not taxable by Idaho may not be subtracted.

(5) The term "income" as used in this subsection (c) means Idaho taxable income as defined in this chapter as modified by section 63-3021(b)(2), (3) and (4), Idaho Code.

(d) In the case of a corporation, add the amount deducted under the provisions of sections 243(a) and (c), 244, 245 and 246A of the Internal Revenue Code (relating to dividends received by corporations) as limited by section 246(b)(1) of said code.

(e) In the case of a corporation, subtract an amount determined under section 78 of the Internal Revenue Code to be taxable as dividends.

(f) Subtract the amount of any income received or accrued during the taxable year which is exempt from taxation by this state, under the provisions of any other law of this state or a law of the United States, if not previously subtracted in arriving at taxable income.

(g) For the purpose of determining the Idaho taxable income of the beneficiary of a trust or of an estate:

(1) Distributable net income as defined for federal tax purposes shall be corrected for the other adjustments required by this section.

(2) Net operating losses attributable to a beneficiary of a trust or estate under section 642 of the Internal Revenue Code shall be a deduction for the beneficiary to the extent that income from the trust or estate would be attributable to this state under the provisions of this chapter.

(h) In the case of an individual who is on active duty as a full-time officer, enlistee or draftee, with the armed forces of the United States, which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more, deduct compensation paid by the armed forces of the United States for services performed outside this state. The deduction is allowed only to the extent such income is included in taxable income.

(i) In the case of a corporation, including any corporation included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, add any capital loss or passive loss deducted which loss was incurred during any year in which such corporation did not transact business in Idaho. However, do not add any capital loss deducted if a corporation, including any corporation in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred. In the case of persons other than corporations, add any capital loss or passive loss deducted which was incurred in activities not taxable by Idaho at the time such loss was incurred. In computing the income taxable to an S corporation or partnership under this section, deduction shall not be allowed for a carryover or carryback of a net operating loss provided for in subsection (c) of this section, a passive loss or a capital loss provided for in section 1212 of the Internal Revenue Code.

(j) In the case of an individual, there shall be allowed as a deduction from gross income either (1) or (2) at the option of the taxpayer:

(1) The standard deduction as defined in section 63, Internal Revenue Code.

(2) Itemized deductions as defined in section 63 of the Internal Revenue Code except state or local taxes measured by net income and general sales taxes as either is defined in section 164 of the Internal Revenue Code.

(k) Add the taxable amount of any lump sum distribution excluded from gross income for federal income tax purposes under the ten (10) year averaging method. The taxable amount will include the ordinary income portion and the amount eligible for the capital gain election.

(l) Deduct any amounts included in gross income under the provisions of section 86 of the Internal Revenue Code relating to certain social security and railroad benefits.

(m) In the case of a self-employed individual, deduct the actual cost of premiums paid to secure worker's compensation insurance for coverage in Idaho, if such cost has not been deducted in arriving at taxable income.

(n) In the case of an individual, deduct the amount contributed to a college savings program pursuant to chapter 54, title 33, Idaho Code, but not more than four thousand dollars (\$4,000) per tax year. If the contribution is

made on or before April 15, 2001, it may be deducted for tax year 2000 and an individual can make another contribution and claim the deduction according to the limits provided in this subsection during 2001 for tax year 2001, as long as the contribution is made on or before December 31, 2001.

(o) In the case of an individual, add the amount of a nonqualified withdrawal from an individual trust account or savings account established pursuant to chapter 54, title 33, Idaho Code, less any amount of such nonqualified withdrawal included in the individual's federal gross income pursuant to section 529 of the Internal Revenue Code.

(p) In the case of an individual, add the amount of a withdrawal from an individual trust account or savings account established pursuant to chapter 54, title 33, Idaho Code, transferred to a qualified tuition program, as defined in section 529 of the Internal Revenue Code, that is operated by a state other than Idaho. The addition provided in this subsection is limited to the amount of the contributions to the Idaho individual trust account or savings account by the account owner that were deducted on the account owner's income tax return for the year of the transfer and the prior taxable year.

History.

1959, ch. 299, § 22, p. 613; am. 1961, ch. 328, § 5, p. 622; am. 1963, ch. 339, § 3, p. 971; am. 1965, ch. 316, § 3, p. 880; am. 1967, ch. 294, § 2, p. 828; am. 1969, ch. 319, § 7, p. 982; am. 1970, ch. 222, § 4, p. 621; am. 1971, ch. 64, § 1, p. 146; am. 1972, ch. 398, § 3, p. 1149; am. 1973, ch. 45, § 1, p. 80; am. 1975, ch. 33, § 1, p. 57; am. 1975, ch. 90, § 1, p. 184; am. 1976, ch. 271, § 1, p. 916; am. 1977, ch. 84, § 1, p. 170; am. 1978, ch. 139, § 1, p. 314; am. 1979, ch. 91, § 1, p. 218; am. 1980, ch. 2, § 1, p. 4; am. 1980, ch. 4, § 1, p. 7; am. 1980, ch. 90, § 1, p. 194; am. 1981, ch. 130, § 1, p. 217; am. 1981, ch. 201, § 2, p. 354; am. 1982, ch. 135, § 1, p. 383; am. 1983, ch. 161, § 1, p. 463; am. 1983, ch. 257, § 1, p. 680; am. 1983, ch. 258, § 1, p. 684; am. 1984, ch. 35, § 2, p. 55; am. 1986, ch. 90, § 2, p. 262; am. 1987, ch. 93, § 2, p. 176; am. 1987, ch. 149, § 1, p. 295; am. 1989, ch. 76, § 1, p. 134; am. 1989, ch. 181, § 1, p. 449; am. 1990, ch. 63, § 1, p. 138; am. 1990, ch. 223, § 1, p. 593; am. 1990, ch. 307, § 1, p. 844; am. 1990, ch. 326, § 8, p.

888; am. 1991, ch. 7, § 2, p. 18; am. 1991, ch. 55, § 2, p. 99; am. 1991, ch. 318, § 3, p. 824; am. 1992, ch. 11, § 3, p. 17; am. 1993, ch. 3, § 1, p. 5; am. 1993, ch. 284, § 2, p. 958; am. 1994, ch. 39, § 1, p. 57; am. 1994, ch. 186, § 1, p. 606; am. 1994, ch. 247, § 1, p. 777; am. 1995, ch. 83, § 2, p. 238; am. 1995, ch. 111, § 9, p. 347; am. 1995, ch. 362, § 3, p. 1265; am. 1996, ch. 340, § 2, p. 1141; am. 1997, ch. 57, § 5, p. 95; am. 1998, ch. 20, § 1, p. 119; am. 1998, ch. 42, § 2, p. 175; am. 1999, ch. 70, § 1, p. 191; am. 2000, ch. 38, § 4, p. 70; am. 2000, ch. 213, § 2, p. 573; am. 2001, ch. 46, § 1, p. 85; am. 2001, ch. 270, § 1, p. 977; am. 2002, ch. 33, § 1, p. 63; am. 2003, ch. 6, § 1, p. 11; am. 2003, ch. 10, § 1, p. 22; am. 2004, ch. 30, § 2, p. 53; am. 2005, ch. 14, § 2, p. 41; am. 2006, ch. 63, § 1, p. 193; am. 2007, ch. 190, § 1, p. 559; am. 2008, ch. 261, § 1, p. 756; am. 2010, ch. 44, § 1, p. 78; am. 2012, ch. 10, § 1, p. 17; am. 2012, ch. 14, § 1, p. 25; am. 2013, ch. 2, § 2, p. 4; am. 2013, ch. 4, § 1, p. 7; am. 2013, ch. 112, § 1, p. 268; am. 2014, ch. 9, § 1, p. 9.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 261, added the last sentence in subsection (p).

The 2010 amendment, by ch. 44, in subsection (p), in the last sentence, deleted "total" following "amount of the" near the middle and substituted "that were deducted on the account owner's income tax return for the year of the transfer and the prior taxable year" for

"in the twelve (12) months preceding the date of the transfer" at the end.

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 10, inserted "or passive loss" three times following "capital loss" in subsection (i).

The 2012 amendment, by ch. 14, twice

inserted "from income" following "subtracted" in the second sentence of paragraph (1)(c).

This section was amended by three 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 2, substituted "63-3022R" for "63-3022Q" near the middle of the introductory paragraph.

The 2013 amendment, by ch. 4, substituted "that are measured by net income, or for which a credit is allowable under section 63-3029, Idaho Code, and" for "and, measured by net income" in subsection (a).

The 2013 amendment, by ch. 112, in subsection (c), rewrote paragraph (1), which formerly read: "A net operating loss for any taxable year commencing on and after January 1, 2000, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars (\$100,000) to the two (2) immediately preceding taxable years. Any portion of the net operating loss not subtracted from income in the two (2) preceding years may be subtracted from income in the next twenty (20) years succeeding the taxable year in which the loss arises in order until exhausted. The sum of the deductions may not exceed the amount of the net operating loss deduction incurred. At the election of the taxpayer, the two (2) year carryback may be foregone and the loss subtracted from income received in taxable years arising in the next twenty (20) years succeeding the taxable year in which the loss arises in order until exhausted. The election shall be made as under section 172(b)(3) of the Internal Revenue Code. An election under this subsection must be in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the year in which it is made. The 'term income' as used in this subsection (c) means Idaho taxable income as defined in this

chapter as modified by section 63-3021(b)(2), (3) and (4), Idaho Code", added paragraphs (2), (3) and (5), and redesignated former paragraph (2) as present paragraph (4).

The 2014 amendment, by ch. 9, added the last sentence in paragraph (c)(3).

Federal References.

The references to the Internal Revenue Code, appearing throughout this section, are codified throughout Title 26 of the United States Code.

Effective Dates.

Section 2 of S.L. 2008, ch. 260 declared an emergency retroactively to January 1, 2008 and approved March 25, 2008.

Section 4 of S.L. 2010, ch. 44 declared an emergency, making this section retroactively effective as of January 1, 2008. Approved March 15, 2010.

Section 2 of S.L. 2012, ch. 10 declared an emergency and made this section retroactive to January 1, 2012. Approved February 13, 2012.

Section 5 of S.L. 2012, ch. 14 declared an emergency and made this section retroactive to January 1, 2012. Approved February 14, 2012.

Section 3 of S.L. 2013, ch. 2 declared an emergency and made this section retroactive to January 1, 2013. Approved February 12, 2013.

Section 6 of S.L. 2013, ch. 4 declared an emergency and made this section retroactive to January 1, 2013. Approved February 12, 2013.

Section 3 of S.L. 2013, ch. 112 declared an emergency and made this section retroactive to January 1, 2013. Approved March 21, 2013.

Section 4 of S.L. 2014, ch. 9 declared an emergency and made this section retroactive to January 1, 2014.

63-3022A. Deduction of certain retirement benefits. — (a) An amount specified by subsection (b) of this section of the following retirement benefits may be deducted by an individual from taxable income if such individual has either attained age sixty-five (65) years, or has attained age sixty-two (62) years and is classified as disabled:

- (1) Retirement annuities paid by the United States of America to a retired civil service employee or the unmarried widow or widower of a retired civil service employee.
- (2) Retirement benefits paid from the firemen's retirement fund of the state of Idaho to a retired fireman or the unmarried widow or widower of a retired fireman.
- (3) Retirement benefits paid to a retired Idaho city police officer:
 - (i) By a city or its agent in regard to a policeman's retirement fund that no longer admits new members and on January 1, 2012, was administered by a city in this state; or
 - (ii) In regard to a policeman's retirement fund that no longer admits

new members and on January 1, 2012, was administered by the public employee retirement system of Idaho; or

(iii) By the public employee retirement system of Idaho to a retired police officer in regard to Idaho employment not included in the federal social security retirement system; or

(iv) An unremarried widow or widower of a person described in subparagraph (i), (ii) or (iii) of this paragraph.

(4) Retirement benefits paid by the United States of America to a retired member of the military services of the United States or the unremarried widow or widower of such member.

(b) The amount of retirement benefits that may be deducted from taxable income shall be an amount not in excess of maximum retirement benefits under the social security act, as amended, on the date on which this act is passed and approved, including adjustments to be made based upon consumer price index adjustments provided in section 215 of the social security act. The state tax commission shall ascertain benefit changes made in accordance with the social security act and publish the appropriate deduction amounts provided by this section reflecting such changes annually. Maximum retirement benefits under the social security act shall mean:

(1) In the case of a taxpayer who files a joint return with his spouse for the tax year, an amount equal to the maximum social security benefits payable for the tax year to a person attaining full retirement age in the tax year who has earned the maximum earnings creditable under social security for the years used in the computation of his benefits, and whose spouse has no social security benefits except those payable on his record of earnings.

(2) In the case of a taxpayer who is not married, an amount equal to maximum social security benefits payable for the tax year to a person attaining full retirement age in the tax year who has earned the maximum earnings creditable under social security for the years used in the computation of his benefits.

(3) In the case of an unremarried widow or widower, an amount equal to the maximum social security benefits payable for the tax year to a widow or widower attaining full retirement age in the tax year who has no social security benefits except those to which he or she is entitled on his or her deceased spouse's record and whose spouse had received no reduced retirement benefits prior to his or her death and whose spouse had earned the maximum earnings creditable under social security for the years used in the computation of his or her benefits under social security.

(4) Maximum retirement benefits shall, in every case, take into consideration and be adjusted to reflect adjustments that would be made to such amounts had they been received as social security benefits as the result of the receipt of earnings in excess of earnings limitations. The terms in this paragraph are those defined in the social security act.

(5) Taxpayers not described in paragraphs (1), (2), (3) and (4) of this subsection may not deduct any amount of retirement benefits under this section.

(c) The total deduction under this section may not exceed the total amount of retirement benefits or annuities which are described in subsec-

tion (a) of this section and which are included in the taxpayer's gross income in the tax year. If the taxpayer or the taxpayer's spouse receives retirement benefits under the federal railroad retirement act or the federal social security act in the tax year, then the amount of any retirement annuities computed under subsection (b) of this section shall be reduced by the amount of such federal railroad retirement act and federal social security act retirement benefits received by either the taxpayer or the taxpayer's spouse, and the lesser of the amount so computed or the total amount of retirement benefits or annuities which are described in subsection (a) of this section and which are included in the taxpayer's gross income shall constitute the allowable deduction. Furthermore, the allowable deduction as calculated under this section may be subject to additional limitations under section 63-3026A(6), Idaho Code, and the rules promulgated thereunder.

(d) As used in this section, the word "disabled" shall mean an individual who is a disabled person described in section 63-701, Idaho Code, or an individual who qualifies as a person with a "permanent disability" under section 49-117(7)(b)(iv), Idaho Code.

History.

I.C., § 63-3022A, as added by 1973, ch. 278, § 2, p. 591; am. 1976, ch. 94, § 1, p. 312; am. 1979, ch. 86, § 3, p. 208; am. 1997, ch. 58, § 1,

p. 107; am. 2000, ch. 26, § 3, p. 45; am. 2004, ch. 30, § 3, p. 53; am. 2012, ch. 13, § 1, p. 23; am. 2013, ch. 4, § 2, p. 7.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 13, in subsection (a), inserted "or widower" following "unremarried widow" in paragraphs (1) and (2), rewrote paragraph (3), which formerly read, "Retirement benefits paid from the policemen's retirement fund of a city within this state to a retired policeman or the unremarried widow of a retired policeman" and added subparagraphs (i) through (iv); deleted former subsection (d), which read, "As used in this section, the word 'widow' shall include a widower"; redesignated former subsection (e) as present subsection (d) and added "or an individual who qualified as a person with a 'permanent disability' under section 49-117(7)(b)(iv), Idaho Code" to the end.

The 2013 amendment, by ch. 4, inserted "or widower" near the end of paragraph (4) of

subsection (a); and, in paragraph (3) of subsection (b), inserted "or widower" following "widow" twice, substituted "spouse" for "husband" three times, and made other gender neutral changes.

Compiler's Notes.

The phrase "on the date on which the act is passed and approved" in subsection (b) refers to March 16, 1973, the approval date of S.L. 1973, Chapter 278.

Effective Dates.

Section 2 of S.L. 2012, ch. 13 declared an emergency and made this section retroactive to January 1, 2012. Approved February 14, 2012.

Section 6 of S.L. 2013, ch. 4 declared an emergency and made this section retroactive to January 1, 2013. Approved February 12, 2013.

63-3022B. Deduction for energy efficiency upgrades. — (1) An individual taxpayer may deduct from taxable income an amount actually paid or accrued by the individual taxpayer during the taxable year for the actual installation of energy efficiency upgrade measures within any existing residence. As used in this section, "existing residence" means any residence in the state of Idaho that serves as the primary place of residence of the individual taxpayer in being, under construction, or subject to an outstanding legal building permit on or before January 1, 2002.

(2) As used in this section:

(a) “Energy efficiency upgrade measure” means an energy efficiency improvement to the building envelope or duct system that meets or exceeds the minimum value for the improved component established by the version of the international energy conservation code (IECC) in effect in Idaho during the taxable year in which the improvement is made or accrued.

(b) “Energy efficiency upgrade measure” includes:

- (i) Insulation that shall be added to existing insulation not in replacement of existing insulation;
- (ii) Windows that may replace less efficient existing windows;
- (iii) Storm windows;
- (iv) Weather stripping and caulking; and
- (v) Duct sealing and insulation. Duct sealing requires mechanical fastening of joints and mastic sealant.

History.

I.C., § 63-3022B, as added by 1976, ch. 212, § 2, p. 773; am. 1995, ch. 111, § 10, p. 347;

am. 2012, ch. 202, § 1, p. 542; am. 2013, ch. 4, § 3, p. 7.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 202, rewrote the section heading, which formerly read, “Deduction for insulation of residences” and rewrote the section, which formerly read: “For taxable years commencing on and after January 1, 1976, an individual taxpayer may deduct from taxable income an amount actually paid or accrued by the individual taxpayer during the taxable year for the actual installation, but not replacement, of insulation within any existing building in the state of Idaho which serves as a place of residence of the individual taxpayer. As used in this section, ‘insulation’ means any material commonly used in the building industry and actually installed for the purpose of retarding the passage of heat energy into or out of a building, including but not limited to, such items as fiberglass insulation, weather stripping, double pane windows, and storm doors

and windows. As used in this section, ‘existing building’ means any building in being, under construction, or subject to an outstanding legal building permit on the effective date of this act.”

The 2013 amendment, by ch. 4, inserted “in the state of Idaho” and “primary” in the last sentence of subsection (1).

Compiler’s Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 2012, ch. 202 declared an emergency and made this section retroactive to January 1, 2012. Approved April 3, 2012.

Section 6 of S.L. 2013, ch. 4 declared an emergency and made this section retroactive to January 1, 2012. Approved February 12, 2013.

63-3022H. Deduction of capital gains. — (1) If an individual taxpayer reports capital gain net income in determining taxable income, eighty percent (80%) in taxable year 2001 and sixty percent (60%) in taxable years thereafter of the capital gain net income from the sale or exchange of qualified property shall be a deduction in determining Idaho taxable income.

(2) The deduction provided in this section is limited to the amount of the capital gain net income from all property included in taxable income. Gains treated as ordinary income by the Internal Revenue Code do not qualify for the deduction allowed in this section. The deduction otherwise allowable

under this section shall be reduced by the amount of any federal capital gains deduction relating to such property, but not below zero.

(3) Property held by an estate, trust, S corporation, partnership, limited liability company or an individual is “qualified property” under this section if the property had an Idaho situs at the time of sale and is:

- (a) Real property held at least twelve (12) months;
- (b) Tangible personal property used in Idaho for at least twelve (12) months by a revenue-producing enterprise;
- (c) Cattle or horses held for breeding, draft, dairy or sporting purposes for at least twenty-four (24) months if more than one-half (1/2) of the taxpayer’s gross income (as defined in section 61(a) of the Internal Revenue Code) for the taxable year is from farming or ranching operations in Idaho;
- (d) Breeding livestock other than cattle or horses held at least twelve (12) months if more than one-half (1/2) of the taxpayer’s gross income (as defined in section 61(a) of the Internal Revenue Code) for the taxable year is from farming or ranching operations in Idaho;
- (e) Timber grown in Idaho and held at least twenty-four (24) months;
- (f) In determining the period for which property subject to this section has been held by a taxpayer, the provisions of section 1223 of the Internal Revenue Code shall apply, except that the holding period shall not include the holding period of property given up in an exchange, when such property would not have constituted qualified property under this section without regard to meeting the holding period nor shall the holding period include any time period in which the property subject to this section was held by a corporation other than an S corporation.

(4) As used in this section “revenue-producing enterprise” means:

- (a) The production, assembly, fabrication, manufacture, or processing of any agricultural, mineral or manufactured product;
- (b) The storage, warehousing, distribution, or sale at wholesale of any products of agriculture, mining or manufacturing;
- (c) The feeding of livestock at a feedlot;
- (d) The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing.

(5) As used in this section the term “real property” means land and other tangible property permanently upon or affixed to the land.

History.

I.C., § 63-3022H, as added by 1987, ch. 324, § 1, p. 680; am. 1994, ch. 39, § 2, p. 57; am. 1995, ch. 83, § 3, p. 238; am. 1995, ch. 111, § 15, p. 347; am. 1996, ch. 41, § 2, p. 111; am. 1997, ch. 56, § 1, p. 93; am. 1998, ch. 414,

§ 1, p. 1306; am. 2001, ch. 321, § 1, p. 1135; am. 2001, ch. 323, § 1, p. 1138; am. 2002, ch. 35, § 2, p. 66; am. 2005, ch. 208, § 1, p. 624; am. 2008, ch. 314, § 1, p. 873; am. 2010, ch. 5, § 1, p. 6.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 313, rewrote the introductory paragraph in subsection (3), which formerly read: “As used in this section ‘qualified property’ means the following prop-

erty having an Idaho situs at the time of sale”; in paragraph (3)(f), added “nor shall the holding period include any time period in which the property subject to this section was held by a corporation other than an S corporation”;

deleted subsections (4) through (6), which pertained to reporting of capital gain; and redesignated former subsection (7) as subsection (4).

The 2010 amendment, by ch. 5, added subsection (5).

Federal References.

Section 61(a) of the Internal Revenue Code, referred to in subsection (3)(c) and (d), is codified as 26 U.S.C.S. § 61(a).

Section 1223 of the Internal Revenue Code, referred to in subsection (3)(f) of this section, is compiled as 26 U.S.C. § 1223.

Effective Dates.

Section 2 of S.L. 2008, ch. 314 declared an emergency retroactively to January 1, 2008. Approved March 31, 2008.

Section 3 of S.L. 2010, ch. 5 declared an emergency retroactively to January 1, 2010. Approved February 11, 2010.

63-3022J. Deduction of value for technological equipment. —

(1) Any individual or corporation may deduct from taxable income an amount equal to the fair market value of technological equipment donated to public elementary or public secondary schools, private elementary or private secondary schools, public universities, private universities, public colleges, private colleges, public community colleges, private community colleges, public technical colleges or private technical colleges, or public libraries and library districts located within the state of Idaho, except that the amount of the deduction shall not exceed the amount of the taxpayer's cost of the technological equipment donated nor reduce Idaho taxable income to less than zero. The deduction allowed pursuant to this section shall be in addition to any other deduction allowed pursuant to this chapter. In order to take the deduction pursuant to this section, the taxpayer shall receive a written statement from the donee in which the donee agrees to accept the technological equipment donated.

(2) For the purposes of this section, "technological equipment" means a computer, computer software, scientific equipment or apparatus to be used by the university, college, community college, technical college, school or library directly or indirectly in the education program of the university, college, community college, technical college, school or library and which is donated to the university, college, community college, technical college, school or library no later than five (5) years after its manufacture has been substantially completed.

(3) For the purposes of this section, a public elementary or public secondary school means one that is located within this state and receives funding pursuant to chapter 10, title 33, Idaho Code.

(4) For purposes of this section, a private elementary or private secondary school means one that is located within this state and is operated on a nonprofit basis.

(5) For the purposes of this section, a public library or library district means one that is located within this state and receives funding pursuant to chapters 26 and 27, title 33, Idaho Code.

(6) For purposes of this section, a public university, public college, public community college or public technical college means one that is located within this state and receives an appropriation from the legislature.

(7) For purposes of this section, a private university, private college, private community college or private technical college means one that is located within this state and is operated on a nonprofit basis.

(8) The state tax commission shall promulgate rules to administer the

provisions of this section. The rules shall be promulgated in compliance with chapter 52, title 67, Idaho Code.

History.

I.C., § 63-3022J, as added by 1995, ch. 111, § 16, p. 347; am. 1996, ch. 40, § 2, p. 103; am.

2002, ch. 35, § 3, p. 66; am. 2009, ch. 40, § 1, p. 114; am. 2013, ch. 4, § 4, p. 7.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 40, in the first sentence in subsection (1), inserted "private elementary or private secondary schools"; and added subsection (4), redesignating former subsection (4) as subsection (5).

The 2013 amendment, by ch. 4, in the first sentence of subsection (1), deleted "For taxable years commencing on and after January 1, 1985" at the beginning and inserted "exceed the amount of the taxpayer's cost of the tech-

nological equipment donated nor" near the end.

Effective Dates.

Section 2 of S.L. 2009, ch. 40 declared an emergency retroactively to January 1, 2009. Approved March 23, 2009.

Section 6 of S.L. 2013, ch. 4 declared an emergency and made this section retroactive to January 1, 2013. Approved February 12, 2013.

63-3022K. Medical savings account. — (1) For taxable years commencing on and after January 1, 1995, annual contributions to a medical savings account not exceeding two thousand dollars (\$2,000) for the account holder and interest earned on a medical savings account shall be deducted from taxable income by the account holder, if such amount has not been previously deducted or excluded in arriving at taxable income. For married individuals the maximum deduction shall be computed separately for each individual. Contributions to the account shall not exceed the amount deductible under this section.

(2) For taxable years beginning on or after January 1, 2014, the annual contributions to a medical savings account shall be limited to ten thousand dollars (\$10,000). Both interest earned and all contributions to medical savings accounts shall be deducted from taxable income by the account holder, if such amount has not been previously deducted or excluded in arriving at taxable income.

(3) For the purpose of this section, the following terms have the following meanings unless the context clearly denotes otherwise:

(a) "Account holder" means an individual, in the case of married individuals each spouse, including a self-employed person, on whose behalf the medical savings account is established.

(b) "Dependent" means a person for whom a deduction is permitted under section 151(b) or (c) of the Internal Revenue Code if a deduction for the person is claimed for that person on the account holder's Idaho income tax return.

(c) "Dependent child" means a child or grandchild of the account holder who is not a dependent if the account holder actually pays the eligible medical expenses of the child or grandchild and the child or grandchild is any of the following:

(i) Under twenty-one (21) years of age, or enrolled as a full-time student at an accredited college or university.

(ii) Legally entitled to the provision of proper or necessary subsistence,

education, medical care or other care necessary for his or her health, guidance or well-being and not otherwise emancipated, self-supporting, married or a member of the armed forces of the United States.

(iii) Mentally or physically incapacitated to the extent that he or she is not self-sufficient.

(d) "Depository" means a state or national bank, savings and loan association, credit union or trust company authorized to act as a fiduciary or an insurance administrator or insurance company authorized to do business in this state, a broker or investment advisor regulated by the department of finance, a broker or insurance agent regulated by the department of insurance or a health maintenance organization, fraternal benefit society, hospital and professional service corporation as defined in section 41-3403, Idaho Code, or nonprofit mutual insurer regulated under title 41, Idaho Code.

(e) "Eligible medical expense" means an expense paid by the taxpayer for medical care described in section 213(d) of the Internal Revenue Code, and long-term care expenses of the account holder and the spouse, dependents and dependent children of the account holder.

(f) "Long-term care expenses" means expenses incurred in providing custodial care in a nursing facility as defined in section 39-1301, Idaho Code, and for insurance premiums relating to long-term care insurance under chapter 46, title 41, Idaho Code.

(g) "Medical savings account" means an account established with a depository to pay the eligible medical expenses of the account holder and the dependents and dependent children of the account holder. Medical savings accounts shall carry the name of the account holder, a designated beneficiary or beneficiaries of the account holder and shall be designated by the depository as a "medical savings account."

(4) Upon agreement between an employer and employee, an employer may establish and contribute to the employee's medical savings account or contribute to an employee's existing medical savings account. For taxable years beginning on or after January 1, 1995, but before January 1, 2014, the total combined annual contributions by an employer and the account holder shall not exceed two thousand dollars (\$2,000) for the account holder. Employer contributions to an employee's medical savings account shall be owned by the employee.

(5) Funds held in a medical savings account may be withdrawn by the account holder at any time. Withdrawals for the purpose of paying eligible medical expenses shall not be subject to the tax imposed in this chapter. Funds held in a medical savings account must be exhausted before the account holder, the account holder's dependent or the account holder's dependent child receives any state assistance for medical care. The burden of proving that a withdrawal from a medical savings account was made for an eligible medical expense is upon the account holder and not upon the depository or the employer of the account holder. Other withdrawals shall be subject to the following restrictions and penalties:

(a) There shall be a distribution penalty for withdrawal of funds by the account holder for purposes other than the payment of eligible medical

expenses. The penalty shall be ten percent (10%) of the amount of withdrawal from the account and, in addition, the amount withdrawn shall be subject to the tax imposed in this chapter. The direct transfer of funds from a medical savings account to a medical savings account at a different depository shall not be considered a withdrawal for purposes of this section. Charges relating to the administration and maintenance of the account by the depository are not withdrawals for purposes of this section.

(b) After an account holder reaches fifty-nine and one-half (59 ½) years of age, withdrawals may be made for eligible medical expenses or for any other reason without penalty, but subject to the tax imposed by this section.

(c) Upon the death of an account holder, the account principal, as well as any interest accumulated thereon, shall be distributed without penalty to the designated beneficiary or beneficiaries.

(d) Funds withdrawn which are later reimbursed shall be taxable unless redeposited into the account within sixty (60) days of the reimbursement. Deposits of reimbursed eligible medical expenses shall not be included in calculating the amount deductible.

(e) Funds deposited in a medical savings account which are deposited in error or unintentionally and which are withdrawn within thirty (30) days of being deposited shall be treated as if the amounts had not been deposited in the medical savings account. Funds withdrawn from a medical savings account which are withdrawn in error or unintentionally and which are redeposited within thirty (30) days of being withdrawn shall be treated as if the amounts had not been withdrawn from the medical savings account.

(f) Funds withdrawn which are, not later than the sixtieth day after the day of the withdrawal, deposited into another medical savings account for the benefit of the same account holder are not a withdrawal for purposes of this section and shall not be included in calculating the amount deductible.

(6) Reporting. Depositories, in the case of medical savings accounts, shall provide to the state tax commission, in the routine fashion used for all interest-bearing accounts, the same information that is provided for any interest-bearing bank account. So as to minimize the burden of reporting, the information shall be provided in the format in which information is provided for any interest-bearing bank account to the state tax commission. There shall be no other reporting requirements. Account holders shall provide on any state income tax form in which they take a deduction for a medical savings account the account number of their medical savings account and the depository at which the account is held.

(7) Any medical care savings account established pursuant to chapter 53, title 41, Idaho Code, as enacted by chapter 186, laws of 1994, may be continued pursuant to the provisions of this section and all duties, privileges and liabilities imposed in this section upon account holders of medical care savings accounts and the beneficiaries of those accounts shall apply to account holders of medical care savings accounts and their beneficiaries

established pursuant to chapter 53, title 41, Idaho Code, as enacted by chapter 186, laws of 1994, as if the medical care savings account were a medical savings account established pursuant to this section.

(8)(a) If the account holder's surviving spouse acquires the account holder's interest in a medical savings account by reason of being the designated beneficiary of such account at the death of the account holder, the medical savings account shall be treated as if the spouse were the account holder.

(b) If, by reason of the death of the account holder, any person acquires the account holder's interest in a medical savings account in a case to which subsection (8)(a) of this section does not apply:

(i) Such account shall cease to be a medical savings account as of the date of death; and

(ii) An amount equal to the fair market value of the assets in such account on such date shall be includable, if such person is not the estate of such holder, in such person's Idaho taxable income for the taxable year which includes such date, or if such person is the estate of such holder, in such holder's Idaho taxable income for the last taxable year of such holder.

(c) The amount includable in Idaho taxable income under subsection (8)(b) of this section by any person, other than the estate, shall be reduced by the amount of qualified medical expenses which were incurred by the decedent before the date of the decedent's death and paid by such person within one (1) year after such date.

History.

I.C., § [63-3022K] 63-3022J, as added by 1995, ch. 362, § 2, p. 1265; am. and redesign. 1996, ch. 60, § 1, p. 175; am. 1997, ch. 318, § 1, p. 939; am. 1998, ch. 398, § 1, p. 1245;

am. 1999, ch. 31, § 1, p. 60; am. 2000, ch. 274, § 150, p. 799; am. 2001, ch. 270, § 3, p. 977; am. 2002, ch. 212, § 1, p. 584; am. 2007, ch. 148, § 7, p. 427; am. 2014, ch. 327, § 1, p. 810.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 327, inserted present subsection (c) and redesignated the subsequent subsections accordingly; in present subsection (4) added "For taxable years beginning on or after January 1, 1995, but before January 1, 2014" at the beginning of the second sentence; and inserted the present third sentence in subsection (5).

Federal References.

Section 151(b) and (c) of the Internal Reve-

nue Code, referred to in subdivision (3)(b), and section 213(d), referred to in subdivision (3)(e), are compiled as 26 U.S.C., §§ 151(b) and (c) and 213(d), respectively.

Effective Dates.

Section 2 of S.L. 2014, ch. 327 declared an emergency and made this section retroactive to January 1, 2014.

63-3022L. Individuals who are owners of an interest in a pass-through entity or beneficiaries of a trust or estate. — (1) Individuals who are not a resident of Idaho as defined in section 63-3014, Idaho Code, but who are owners of an interest in a pass-through entity, as defined in section 63-3006C, Idaho Code, transacting business in Idaho or who are beneficiaries of a trust or estate with income taxable in Idaho may have Idaho tax relating to income described in subsection (2) of this section

reported and paid by the pass-through entity on a return, referred to in this section as a “composite return.” Income subject to this subsection shall be taxed at the rate applicable to corporations. The option to file a composite return and pay tax for nonresident owners is in lieu of the backup withholding requirements of section 63-3036B, Idaho Code.

(2) The provisions of subsection (1) of this section apply to the share of any income, loss, deduction or credit of a pass-through entity required to be included on such individual’s Idaho return.

(3) For purposes of subsection (2) of this section, deductions, loss and credits allowed in computing the tax liability and income attributable to the individual owner shall be prescribed in the rules of the state tax commission pursuant to section 63-3026A, Idaho Code.

(4) If a corporation, partnership, trust or estate transacting business in Idaho does not comply with the provisions of section 63-3036B, Idaho Code, and also fails to file an Idaho income tax return reporting all of the items described in subsection (2) of this section or fails to pay any tax due thereon, such corporation, partnership, trust or estate shall be liable for tax on such items at the rate applicable to corporations. An entity may rely upon information provided by the individual indicating state of residency, as prescribed in the rules of the state tax commission.

(5) A pass-through entity that files a composite return as described in subsection (1) of this section shall include a statement with the return showing, and report on the K-1 to each individual whose income is included in the return, each individual’s share of the income reported on the return and the tax paid by the pass-through entity on each individual’s share of the income reported on the return. The statement shall be made on a form prescribed by the state tax commission and shall contain any other information required by it. If the individual filed an Idaho return, the individual shall include the income shown on the K-1 to that individual and shall be entitled to a credit for the tax paid by the entity on such income shown on the K-1 to that individual.

(6) “Individual” for purposes of this section means a:

- (a) Natural person;
- (b) Grantor trust as described in sections 673 through 677 or section 678 of the Internal Revenue Code;
- (c) Qualified subchapter S trust as described in section 1361(d) (3) of the Internal Revenue Code; or
- (d) Single member limited liability company that has not elected to be classified as a corporation and is treated as a disregarded entity for federal income tax purposes.

History.

I.C., § 63-3022L, as added by 1996, ch. 340, § 1, p. 1141; am. 1997, ch. 57, § 6, p. 95; am. 1999, ch. 60, § 3, p. 156; am. 2000, ch. 38, § 1,

p. 70; am. 2001, ch. 270, § 4, p. 977; am. 2010, ch. 37, § 2, p. 67; am. 2011, ch. 3, § 1, p. 6; am. 2012, ch. 187, § 1, p. 491; am. 2014, ch. 36, § 1, p. 61.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 37, rewrote

the section to the extent that a detailed comparison is impracticable.

The 2011 amendment, by ch. 3, added “or to a nonresident who has Idaho taxable income in addition to income subject to the election allowed in this section” to the end of subsection (1) and added subsection (5).

The 2012 amendment, by ch. 187, rewrote the section to the extent that a detailed comparison is impracticable, adding present subsections (4) and (5).

The 2014 amendment, by ch. 36, added “pursuant to section 63-3026A, Idaho Code” at the end of subsection (3) and added subsection (6).

Federal References.

Sections 673 through 677, 678, and 1361(d)(3) of the Internal Revenue Code, re-

ferred to in paragraphs (6)(b) and (6)(c), are codified as 26 U.S.C.S. §§ 673 through 677, 678, and 1361(d)(3).

Effective Dates.

Section 4 of S.L. 2010, ch. 37 provided that the act should take effect on and after January 1, 2011.

Section 4 of S.L. 2011, ch. 3 declared an emergency retroactively to January 1, 2011. Approved February 15, 2011.

Section 4 of S.L. 2012, ch. 187 declared an emergency and made this section retroactive to January 1, 2012. Approved March 29, 2012.

Section 4 of S.L. 2014, ch. 36 declared an emergency and made this section retroactive to January 1, 2014.

63-30220. Adjustment — Property acquired after September 10, 2001 — Small business expenses — Limitations on assessments and refunds. — For taxable years commencing on and after January 1, 2001, in computing Idaho taxable income:

(1) The adjusted basis of depreciable property, depreciation and gains and losses from sale, exchange or other disposition of depreciable property acquired after September 10, 2001, and before December 31, 2007, shall be computed without regard to subsection (k) of section 168 of the Internal Revenue Code and the adjusted basis of depreciable property, depreciation and gains and losses from sale, exchange or other disposition of depreciable property acquired after December 31, 2009, shall be computed without regard to subsection (k) of section 168 of the Internal Revenue Code; and

(2) Adjustments in computing Idaho taxable income required by subsection (1) of this section shall be made without regard to loss limitations imposed by sections 465, 469, 704(d) and 1366(d) of the Internal Revenue Code; and

(3) A taxpayer's basis in an interest in a pass-through entity, amount at risk, and passive activity loss carryover shall be the same amount for purposes of the Idaho income tax act as the amount determined under the Internal Revenue Code; and

(4) Each partner, shareholder, member or beneficiary shall include in Idaho taxable income his share of the adjustments required by this section in computing Idaho taxable income of any pass-through entity; and

(5) Notwithstanding the provisions of sections 63-3068 and 63-3072, Idaho Code, the period of limitations for issuing a notice of deficiency determination or filing a claim for refund for any year for which an adjustment is required by this section shall not expire before three (3) years from the later of: (a) the due date of the return for the last taxable year an adjustment was required by this section, or (b) the date the return was filed for the last taxable year an adjustment was required by this section. Upon the expiration of the period of limitations as provided in subsections (a) and (m) of section 63-3068, Idaho Code, and subsections (b) and (h) of section 63-3072, Idaho Code, only those specific items of basis, deductions, gains or losses that are computed, without regard to subsection (k) of section 168 of

the Internal Revenue Code, as required by this section shall be subject to adjustment.

History.

I.C., § 63-3022O, as added by 2003, ch. 350, § 2, p. 937; am. 2004, ch. 20, § 2, p. 22; am. 2007, ch. 11, § 1, p. 20; am. 2008, ch. 319, § 2,

p. 882; am. 2011, ch. 1, § 2, p. 3; am. 2012, ch. 14, § 2, p. 25; am. 2012, ch. 59, § 1, p. 158; am. 2014, ch. 341, § 1, p. 859.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 319, in the section catchline, inserted "and before December 31, 2007"; and in subsection (1), inserted "acquired after September 10, 2001, and before December 31, 2007".

The 2011 amendment, by ch. 1, deleted "and before December 31, 2007" following "September 10, 2001" in the section heading; and added "and the adjusted basis of depreciable property, depreciation and capital gains and losses shall be computed without regard to subsection (k) of section 168 of the Internal Revenue Code, as amended by the 'tax relief, unemployment insurance reauthorization and job creation act of 2010' and as amended by the 'small business jobs act of 2010'" at the end of subsection (1).

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 14, deleted "capital" preceding "gains and losses" near the middle of subsection (1).

The 2012 amendment, by ch. 59, deleted "Expenses of elementary and secondary teachers" following "2001" in the section heading, deleted former subsection (2) which read, "No deduction shall be allowed relating to expenses of elementary and secondary teachers otherwise allowable under section 62(a)(2)(D) of the Internal Revenue Code" and renumbered the subsequent subsections accordingly.

The 2014 amendment, by ch. 341, in subsection (1), inserted "from sale, exchange or other disposition of depreciable property acquired after December 31, 2009" and deleted "as amended by the 'tax relief, unemployment insurance reauthorization and job creation act of 2010' and as amended by the 'small business jobs act of 2010'" following "Internal Revenue Code" near the end.

Federal References.

The references to the Internal Revenue Code, appearing throughout this section, are codified throughout Title 26 of the United States Code.

Effective Dates.

Section 4 of S.L. 2008, ch. 319 declared an emergency retroactively to January 1, 2008. Approved March 31, 2008.

Section 3 of S.L. 2011, ch. 1 declared an emergency retroactively to January 1, 2010. Approved February 11, 2011.

Section 5 of S.L. 2012, ch. 14 declared an emergency and made this section retroactive to January 1, 2012. Approved February 14, 2012.

Section 2 of S.L. 2012, ch. 59 declared an emergency and made this section retroactive to January 1, 2012. Approved March 13, 2012.

Section 2 of S.L. 2014, ch. 341 declared an emergency and made this section retroactive to January 1, 2013.

63-3022Q. Long-term care insurance.

RESEARCH REFERENCES

Idaho Law Review. — Paying for Long-Term Care in the Gem State, Andrew M. Hyer. 48 Idaho L. Rev. 351 (2012).

63-3022R. Certain loss recoveries. — If taxable income includes recovered amounts previously deducted from taxable income that were not allowed or allowable as a deduction from Idaho taxable income except as provided by this section, a deduction equal to the recovered amount shall be allowed in determining Idaho taxable income.

History.

I.C., § 63-3022R, as added by 2013, ch. 2,
§ 1, p. 4.

STATUTORY NOTES**Effective Dates.**

Section 3 of S.L. 2013, ch. 2 declared an emergency and made this section retroactive

to January 1, 2013. Approved February 12, 2013.

63-3022S. Income earned on an Indian reservation. — A taxpayer who is an enrolled member of a federally recognized Indian tribe who resides on the reservation of the Coeur d'Alene tribe, the Kootenai tribe of Idaho, the Nez Perce tribe, the Shoshone-Bannock tribes of the Fort Hall reservation or the Shoshone-Paiute tribes of the Duck Valley reservation may deduct from taxable income an amount equal to the taxpayer's income earned on the reservation of a tribe enumerated in this section, without regard to whether the reservation is the reservation of the tribe of which the taxpayer is an enrolled member.

History.

I.C., § 63-3022S, as added by 2014, ch. 18,
§ 1, p. 25.

STATUTORY NOTES**Compiler's Notes.**

Section 1 of S.L. 2014, ch. 18 and section 1 of S.L. 2014, ch. 85 enacted a new section of the Idaho Code designated as 63-3022S. Because of its earlier effective date, the enactment of S.L. 2014, ch. 18 has been retained at that code number. The enactment by S.L. 2014, ch. 85 has been redesignated, through the use of brackets, as § 63-3022T.

Effective Dates.

Section 2 of S.L. 2014, ch. 18, as amended by S.L. 2014, ch. 259, § 1, declared an emergency and made this section retroactive to January 1, 2013.

[63-3022T] 63-3022S. Relief from joint and several liability on joint return. — (1) An individual who has filed a joint return and who has been granted relief from joint and several liability by the internal revenue service shall have such relief recognized, granted and honored by the state tax commission for state income tax purposes.

(2) The tax commission shall promulgate such rules as are necessary to carry out the provisions of this section.

History.

I.C., § 63-3022S, as added by 2014, ch. 85,
§ 1, p. 235.

STATUTORY NOTES**Compiler's Notes.**

Section 1 of S.L. 2014, ch. 18 and section 1 of S.L. 2014, ch. 85 enacted a new section of the Idaho Code designated as 63-3022S. Because of its earlier effective date, the enactment of S.L. 2014, ch. 18 has been retained at

that code number. The enactment by S.L. 2014, ch. 85 has been redesignated, through the use of brackets, as § 63-3022T.

Effective Dates.

Section 2 of S.L. 2014, ch. 85 declared an

emergency and made this section retroactive to January 1, 2014.

63-3024. Individuals' tax and tax on estates and trusts. — For taxable year 2001, and each taxable year thereafter, a tax measured by Idaho taxable income as defined in this chapter is hereby imposed upon every individual, trust, or estate required by this chapter to file a return.

(a) The tax imposed upon individuals, trusts and estates shall be computed at the following rates:

When Idaho taxable income is:	The rate is:
Less than \$1,000	One and six-tenths percent (1.6%)
\$1,000 but less than \$2,000	\$16, plus three and six-tenths percent (3.6%) of the amount over \$1,000
\$2,000 but less than \$3,000	\$52, plus four and one-tenth percent (4.1%) of the amount over \$2,000
\$3,000 but less than \$4,000	\$93, plus five and one-tenth percent (5.1%) of the amount over \$3,000
\$4,000 but less than \$5,000	\$144, plus six and one-tenth percent (6.1%) of the amount over \$4,000
\$5,000 but less than \$7,500	\$205, plus seven and one-tenth percent (7.1%) of the amount over \$5,000
\$7,500 and over	\$383, plus seven and four-tenths percent (7.4%) of the amount over \$7,500

For taxable year 2000 and each year thereafter, the state tax commission shall prescribe a factor which shall be used to compute the Idaho income tax brackets provided in subsection (a) of this section. The factor shall provide an adjustment to the Idaho tax brackets so that inflation will not result in a tax increase. The Idaho tax brackets shall be adjusted as follows: multiply the bracket amounts by the percentage (the consumer price index for the calendar year immediately preceding the calendar year to which the adjusted brackets will apply divided by the consumer price index for calendar year 1998). For the purpose of this computation, the consumer price index for any calendar year is the average of the consumer price index as of the close of the twelve (12) month period for the immediately preceding calendar year, without regard to any subsequent adjustments, as adopted by the state tax commission. This adoption shall be exempt from the provisions of chapter 52, title 67, Idaho Code. The consumer price index shall mean the consumer price index for all U.S. urban consumers published by the United States department of labor. The state tax commission shall annually include the factor as provided in this subsection to multiply against Idaho taxable income in the brackets above to arrive at that year's Idaho taxable income for tax bracket purposes.

(b) In case a joint return is filed by husband and wife pursuant to the provisions of section 63-3031, Idaho Code, the tax imposed by this section shall be twice the tax which would be imposed on one-half (1/2) of the aggregate Idaho taxable income. For the purposes of this section, a return of a surviving spouse, as defined in section 2(a) of the Internal Revenue Code, and a head of household, as defined in section 2(b) of the Internal Revenue

Code, shall be treated as a joint return and the tax imposed shall be twice the tax which would be imposed on one-half (1/2) of the Idaho taxable income.

(c) In the case of a trust that is an electing small business trust as defined in section 1361 of the Internal Revenue Code, the special rules for taxation of such trusts contained in section 641 of the Internal Revenue Code shall apply except that the maximum individual rate provided in this section shall apply in computing tax due under this chapter.

(d) The state tax commission shall compute and publish Idaho income tax liability for taxpayers at the midpoint of each bracket of Idaho taxable income in fifty dollar (\$50.00) steps to fifty thousand dollars (\$50,000), rounding such calculations to the nearest dollar. Taxpayers having income within such brackets shall file returns based upon and pay taxes according to the schedule thus established. The state tax commission shall promulgate rules defining the conditions upon which such returns shall be filed.

History.

1959, ch. 299, § 24, p. 613; am. 1963, ch. 425, § 1, p. 1104; am. 1965, ch. 195, § 39, p. 408; am. 1967, ch. 294, § 4, p. 828; am. 1968 (2nd E.S.), ch. 27, § 1, p. 51; am. 1969, ch. 319, § 8, p. 982; am. 1969, ch. 456, § 1, p. 1262; am. 1971, ch. 302, § 2, p. 1242; am. 1972, ch. 398, § 4, p. 1149; am. 1973, ch. 326, § 1, p. 690; am. 1974, ch. 303, § 1, p. 1782; am. 1975, ch. 138, § 1, p. 309; am. 1975, ch.

170, § 1, p. 460; am. 1976, ch. 1, § 2, p. 3; am. 1976, ch. 76, § 1, p. 247; am. 1986, ch. 90, § 3, p. 262; am. 1987, ch. 93, § 3, p. 176; am. 1987, ch. 342, § 1, p. 680; am. 1992, ch. 11, § 4, p. 17; am. 1995, ch. 111, § 19, p. 347; am. 2000, ch. 479, § 2, p. 1651; am. 2001, ch. 386, § 1, p. 1348; am. 2002, ch. 35, § 6, p. 66; am. 2003, ch. 10, § 3, p. 22; am. 2006, ch. 195, § 1, p. 599; am. 2012, ch. 321, § 1, p. 879.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 321, in subsection (a), substituted “\$7,500 and over” for “\$7,500 but less than 20,000” and deleted “over \$20,000” and its accompanying rate.

Federal References.

Sections 2, 1361, and 641 of the Internal

Revenue Code are compiled as 26 U.S.C.S. §§ 2, 1361, and 641, respectively.

Effective Dates.

Section 3 of S.L. 2008, ch. 321 declared an emergency and made this section retroactive to January 1, 2012. Approved April 5, 2012.

63-3024A. Food tax credits and refunds. — (1) Any resident individual who is required to file and who has filed an Idaho income tax return shall be allowed a credit against taxes due under the Idaho income tax act for each personal exemption for which a deduction is permitted by section 151(b) and (c) of the Internal Revenue Code, and which is claimed on the taxpayer’s Idaho income tax return. The amount of the credit for tax year 2008 shall be as follows:

When Idaho taxable income is:	The rate is:
\$1,000 or less	\$50.00
Over \$1,000	\$30.00

Subject to the limitations provided in subsections (13) and (14) of this section, the credits allowed in this subsection shall be increased by ten dollars (\$10.00) in each tax year after tax year 2008 until such time as each credit equals one hundred dollars (\$100).

If taxes due are less than the total credit allowed, the taxpayer shall be paid a refund equal to the balance of the unused credit.

(2) A resident individual who is not required to file an Idaho income tax return and for whom no credit or refund is allowed under any other subsection of this section shall, subject to the limitations of subsections (3), (4), (5), (6), (7) and (8) of this section, be entitled to a refund in the amount provided in subsection (1) of this section.

(3) A resident individual who has reached his sixty-fifth birthday before the end of his taxable year and who has claimed the credit available under subsection (1) of this section, in addition to the amount of credit or refund due under subsection (1) of this section, shall be entitled to twenty dollars (\$20.00), which shall be claimed as a credit against any taxes due under the Idaho income tax act. If taxes due are less than the total credit allowed, the individual shall be paid a refund equal to the balance of the unused credit.

(4) Except as provided in subsection (9) of this section, a credit or refund under this section is only available if the individual for whom a personal exemption is claimed is a resident of the state of Idaho.

(5) In no event shall more than one (1) taxpayer be allowed a credit or refund for the same personal exemption, or under more than one (1) subsection of this section.

(6) In the event that a credit or refund is attributable to any individual for whom assistance under the federal food stamp program was received for any month or part of a month during the taxable year for which the credit or refund is claimed, the credit or refund allowed under this section shall be in proportion to the number of months of the year in which no assistance was received.

(7) In the event that a credit or refund is attributable to any individual who has been incarcerated for any month or part of a month during the taxable year for which the credit or refund is claimed, the credit or refund allowed under this section shall be in proportion to the number of months of the year in which the individual was not incarcerated.

(8) No credit or refund shall be paid that is attributable to an individual residing illegally in the United States.

(9) Any part-year resident entitled to a credit under this section shall receive a proportionate credit reflecting the part of the year in which he was domiciled in this state.

(10) Any refund shall be paid to such individual only upon his making application therefor, at such time and in such manner as may be prescribed by the state tax commission. The state tax commission shall prescribe the method by which the refund is to be made to the taxpayer. The refunds authorized by this section shall be paid from the state refund fund in the same manner as the refunds authorized by section 63-3067, Idaho Code.

(11) An application for any refund that is due and payable under the provisions of this section must be filed with the state tax commission within three (3) years of:

- (a) The due date, including extensions, of the return required under section 63-3030, Idaho Code, if the applicant is required to file a return; or
- (b) The fifteenth day of April of the year following the year to which the application relates if the applicant is not required to file a return.

(12) The state tax commission shall provide income tax payers with the irrevocable option of donating credited funds accruing pursuant to this section. Any funds so donated shall be remitted from the refund fund to the cooperative welfare fund, created pursuant to section 56-401, Idaho Code, and shall be used solely for the purpose of providing low-income Idahoans with assistance in paying home energy costs.

(13) The credit adjustment required by subsection (1) of this section shall not take place if a majority of the membership of each house of the legislature adopts a concurrent resolution requesting that the governor issue an executive order directing the state tax commission that the credit allowed in this section remain unchanged for the tax year in which the requesting legislature is meeting, and if the governor concurs and issues such an executive order, the credit shall remain unchanged for that tax year.

(14) The credit adjustment required by subsection (1) of this section for tax years subsequent to tax year 2008 shall not take place if all of the following conditions are met:

(a) The governor has ordered a temporary reduction of general fund spending authority, pursuant to section 67-3512A, Idaho Code, between July 1 and October 1 of the tax year for which the credit adjustment is to take place; and

(b) The temporary reduction of general fund spending authority is still in effect on October 1 of the tax year for which the credit adjustment is to take place; and

(c) The amount of the temporary reduction in general fund spending authority equals or exceeds one percent (1%) of the moneys that the legislature has appropriated from the general fund for the fiscal year for which the temporary reductions have been ordered; and

(d) The governor issues an executive order directing the state tax commission that the credit allowed by subsection (1) of this section remain unchanged for the tax year during which the temporary reduction of general fund spending authority has been ordered and the executive order issued.

History.

I.C., § 63-3024A, as added by 2008, ch. 316, § 2, p. 876.

STATUTORY NOTES

Prior Laws.

Former § 63-3024A, which comprised I.C., § 63-3024A, as added by 1976, ch. 1, § 3, p. 3; am. 1977, ch. 89, § 1, p. 181; am. 1978, ch. 140, § 1, p. 317; am. 1983, ch. 20, § 1, p. 56; am. 1987, ch. 93, § 4, p. 176; am. 1993, ch. 3, § 2, p. 5; am. 1996, ch. 202, § 1, p. 624; am. 2001, ch. 386, § 2, p. 1348, was repealed by

S.L. 2008, ch. 316, § 1, effective January 1, 2008.

Effective Dates.

Section 3 of S.L. 2008, ch. 316 declared an emergency retroactively to January 1, 2008. Approved March 31, 2008.

RESEARCH REFERENCES

A.L.R. — Construction and operation of statutory time limit for filing claim for state tax refund. 14 A.L.R.6th 119.

63-3025. Tax on corporate income. — (1) For taxable years commencing on and after January 1, 2001, a tax is hereby imposed on the Idaho taxable income of a corporation, other than an S corporation, which transacts or is authorized to transact business in this state or which has income attributable to this state. The tax shall be equal to seven and four-tenths percent (7.4%) of Idaho taxable income.

(2) In the case of an S corporation that is required to file a return under section 63-3030, Idaho Code, a tax is hereby imposed at the rate provided in subsection (1) of this section upon both:

(a) Net recognized built-in gain attributable to this state. The amount of net recognized built-in gain attributable to this state shall be computed in accordance with section 1374 of the Internal Revenue Code subject to the apportionment and allocation provisions of section 63-3027, Idaho Code.

(b) Excess net passive income attributable to this state. The amount of excess net passive income attributable to this state shall be computed in accordance with section 1375 of the Internal Revenue Code subject to the apportionment and allocation provisions of section 63-3027, Idaho Code.

(3) The tax imposed by subsection (1) or (2) of this section shall not be less than twenty dollars (\$20.00); provided further that the twenty dollar (\$20.00) minimum payment shall not be collected from nonproductive mining corporations.

(4) The tax imposed by this section shall not apply to corporations taxed pursuant to the provisions of section 63-3025A, Idaho Code.

History.

I.C., § 63-3025, as added by 1982, ch. 203, § 7, p. 533; am. 1983, ch. 221, § 1, p. 616; am. 1987, ch. 342, § 2, p. 725; am. 1995, ch. 111,

§ 20, p. 347; am. 2001, ch. 386, § 3, p. 1348; am. 2007, ch. 14, § 1, p. 25; am. 2012, ch. 321, § 2, p. 879.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 321, substituted "seven and four-tenths percent (7.4%)" for "seven and six-tenths percent (7.6%)" near the end of subsection (1).

referred to in paragraph (2)(b), is codified as 26 U.S.C.S. § 1375.

Federal References.

Section 1375 of the Internal Revenue Code,

Effective Dates.

Section 3 of S.L. 2012, ch. 321 declared an emergency and made this section retroactive to January 1, 2012. Approved April 5, 2012.

63-3025B. Organizations exempt from the tax imposed by this chapter. — (1) Except as provided in subsection (4) of this section, an organization described in section 501 of the Internal Revenue Code, and the additional organizations listed in this section shall be specifically exempt from taxation under this chapter unless such exemption is denied under section 502, 503, 504 or 6033j of the Internal Revenue Code:

(a) Fraternal beneficiary societies, orders or associations, operating un-

der the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system;

(b) Farmer's or other mutual hail, cyclone, casualty or fire insurance companies or associations, including interinsurers and reciprocal underwriters of the same class, the income of which is used or held only for the purpose of paying losses or expenses;

(c) Federal land banks and national farm loan associations as provided in the farm credit act of 1971, as amended.

(2) Farmer's cooperatives shall be exempt from taxation under this chapter to the extent exempted by section 521 of the Internal Revenue Code.

(3) Federal savings and loan associations shall not be exempt from taxation under this chapter.

(4) Unrelated business income as defined in the Internal Revenue Code shall be subject to taxation under this chapter.

History.

I.C., § 63-3025B, as added by 1995, ch. 111,

§ 23, p. 347; am. 1997, ch. 57, § 7, p. 95; am. 2014, ch. 9, § 2, p. 9.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 9, in the introductory language of subsection (1), substituted "in this section" for "below" and "503, or 504 or 6033j" for "503 or 504"; and substituted "as provided in the farm credit act of 1971" for "as provided in the federal farm loan act" in paragraph (1)(c).

Federal References.

Sections 501, 502, 503, 504, and 6033j of the Internal Revenue Code, referred to in the

introductory paragraph, are compiled as 26 U.S.C.S. §§ 501, 502, 503, 504, and 6033j.

Section 521 of the Internal Revenue Code, referred to in subsection (2), is compiled as 26 U.S.C.S. § 521.

The farm credit act of 1971, referred to in subsection (1)(c), is codified as 12 U.S.C.S. § 2001 et seq.

Effective Dates.

Section 4 of S.L. 2014, ch. 9 declared an emergency and made this section retroactive to January 1, 2014.

63-3026A. Computing Idaho taxable income of part-year or non-resident individuals, trusts and estates. — (1) For nonresident individuals, trusts, or estates the term "Idaho taxable income" includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(2) For part-year resident individuals, trusts or estates the term "Idaho taxable income" includes the total of: (a) Idaho taxable income as computed for a resident for the portion of the tax period during which a taxpayer is domiciled in or is residing in Idaho, plus (b) those components of Idaho taxable income which are derived from or related to sources within Idaho for that portion of the tax period during which a taxpayer is not domiciled in and is not residing in Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(3) For the purposes of subsections (1) and (2) of this section:

(a) Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:

(i) Any business, trade, profession or occupation conducted or carried on in this state, including the distributive share of partnership income and deductions, and the pro rata share of S corporation income and deductions. Partnership income, including guaranteed payments pursuant to section 707 of the Internal Revenue Code, is sourced to Idaho based upon the Idaho apportionment factor of the partnership; excluding:

1. Guaranteed payment to a retired partner per 4 U.S.C. section 114(b)(1)(I) that is sourced to the recipient's state of domicile;
2. Guaranteed payment to an individual partner up to two hundred fifty thousand dollars (\$250,000) in any calendar year is sourced as compensation for services. The amount of the guaranteed payment in excess of two hundred fifty thousand dollars (\$250,000) is sourced to Idaho based upon the partnership's Idaho apportionment factor. The two hundred fifty thousand dollar (\$250,000) amount will be adjusted annually by multiplying the amount by the percentage (the consumer price index for the calendar year immediately preceding the calendar year to which the adjusted amount will apply divided by the consumer price index for calendar year 2013) as defined in section 63-3024, Idaho Code;

(ii) The ownership or disposition of any interest in real or tangible personal property located in this state;

(iii) The ownership or disposition of any interest in intangible personal property only to the extent that such property is employed in a business, trade, profession or occupation conducted or carried on in this state. Provided however, that interest income from an installment sale of real or tangible personal property shall constitute income from sources within this state to the extent that the property sold was located within this state. Provided further, that interest income received by a partner or shareholder of a partnership or S corporation from such partnership or S corporation shall constitute income from sources within this state to the extent that the partnership or S corporation is transacting business within this state;

(iv) A resident estate or trust; provided however, that income distributed to beneficiaries of an estate or trust shall constitute income from sources within this state only to the extent the income would be Idaho source income if such income had been received directly by a nonresident individual;

(v) A nonresident estate or trust to the extent the income and deductions of the nonresident estate or trust were derived from or related to sources within this state;

(vi) The conduct of pari-mutuel wagering, charitable gaming or any other form of gambling taking place within this state, except as expressly limited in section 67-7439, Idaho Code;

(vii) Gains or losses realized from the sale or other disposition of a partnership interest or stock in an S corporation to the extent of the

partnership's or S corporation's Idaho apportionment factor in the taxable year immediately preceding the year of sale. In the case of a nonresident individual who sells the nonresident's interest in a publicly traded partnership defined in section 7704 of the Internal Revenue Code doing business in Idaho, the gains or losses shall be determined using the amount described in section 751 of the Internal Revenue Code, multiplied by the apportionment factor for the year in which the sale occurred.

(b) Notwithstanding the provisions of subsection (3)(a) of this section, transactions and investments made, placed or directed by Idaho resident registered broker-dealers and investment advisers or institutions exempt from registration under the Idaho securities act in securities listed with or through the New York Stock Exchange, the American Stock Exchange or any other stock exchange registered with the United States securities and exchange commission and approved by the director of the department of finance which generate dividends, interest, capital gains or similar profits or returns for nonresidents not otherwise subject to Idaho income taxation shall not result in the intangible property being deemed to have a situs outside the domicile of the owner.

(c) Nonresident individuals shall not be taxable on investment income from a qualified investment partnership. For purposes of this paragraph, a "qualified investment partnership" means a partnership, as defined in section 63-3006B, Idaho Code, that derives at least ninety percent (90%) of its gross income from investments that produce income that would not be taxable to a nonresident individual if the investment were held by that individual.

(d) Compensation paid by the United States for active service in the armed forces of the United States, performed by an individual not domiciled in this state, shall not constitute income derived from or related to sources within this state.

(e) The income of nonresident or part-year resident individuals, trusts or estates which is derived from or related to sources both within and without this state shall be attributable to this state in the manner prescribed in the rules of the state tax commission.

(4) In computing the Idaho taxable income of a part-year or nonresident individual, trust or estate, the standard deduction or itemized deductions, as defined in section 63-3022(j), Idaho Code, if applicable, and the exemptions, as defined in section 151 of the Internal Revenue Code or any allowance in lieu of such deduction, shall be allowed in the proportion that paragraph (a) of this subsection bears to paragraph (b) of this subsection:

(a) The Idaho taxable income of the taxpayer modified as follows:

(i) No allowance shall be made for either the standard deduction or itemized deductions;

(ii) No deduction shall be made for personal exemptions or any allowance in lieu of such deduction.

(b) The Idaho taxable income as would be calculated for a resident of Idaho modified as follows:

(i) No allowance shall be made for either a standard deduction or itemized deductions;

- (ii) No deduction shall be made for personal exemptions or any allowance in lieu of such deduction;
- (iii) Compensation for active military service in the armed forces shall not be deducted;
- (iv) Income earned within the original exterior boundaries of any federally created Indian reservation by an enrolled Indian in a federally recognized Indian tribe on a federally recognized Indian reservation shall be added if not otherwise included.

(5) An adjustment may be made to eliminate distortions in the amount of net income attributable to a taxpayer's activities within the state of Idaho. Such deductions shall be limited to circumstances involving itemized deductions as referred to in subsection (4) of this section and which reflect:

- (a) A failure to reflect the net income or deduction after reimbursements have been received; or
- (b) A failure to reflect the net amount of mortgage interest income or expense from activities within Idaho.

(6) For the purposes of subsections (1) and (2) of this section, deductions and adjustments allowed in computing the Idaho taxable income of nonresident and part-year resident individuals, trusts and estates shall be prescribed in the rules of the state tax commission. Such rules shall be based upon:

- (a) Whether or not the deduction or adjustment is related to the production of income reportable to Idaho;
- (b) Whether or not the deduction or adjustment is related to income received, expenses paid, or events of tax consequence which occurred during a portion of a taxable year that the taxpayer was domiciled in or residing in Idaho; or
- (c) Any other appropriate basis for making the adjustment. An "appropriate basis" is one which the state tax commission finds is needed to insure that the amount of Idaho taxable income is fairly and reasonably related to a taxpayer's activities in this state.

History.

I.C., § 63-3026A, as added by 1995, ch. 111, § 26, p. 347; am. 1996, ch. 40, § 3, p. 103; am. 1998, ch. 42, § 4, p. 175; am. 2000, ch. 38, § 5,

p. 70; am. 2005, ch. 21, § 1, p. 57; am. 2005, ch. 405, § 1, p. 1380; am. 2007, ch. 12, § 1, p. 21; am. 2010, ch. 108, § 1, p. 219; am. 2011, ch. 3, § 2, p. 6; am. 2013, ch. 83, § 1, p. 203.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 108, added the proviso in paragraph (3)(a)(iv).

The 2011 amendment, by ch. 3, added the last sentence in paragraph (3)(a)(vii).

The 2013 amendment, by ch. 83, in paragraph (3)(a)(i), added the second sentence in the introductory paragraph and paragraphs 1. and 2.

Federal References.

Section 707 of the Internal Revenue Code, referred to in paragraph (3)(a)(i), is codified as 26 U.S.C.S. § 707.

Sections 7704 and 751 of the Internal Revenue Code, referred to in paragraph (3)(a)(viii), are codified as 26 U.S.C.S. § 7704 and 751, respectively.

Section 151 of the Internal Revenue Code, referred to in the introductory paragraph of subsection (4), is codified as 26 U.S.C.S. § 151.

Compiler's Notes.

The word enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 2010, ch. 108 declared an

emergency retroactively to January 1, 2010 applicable to all proceedings pending before the state tax commission, board of tax appeals or the courts of this state on the effective date of this act. Approved March 25, 2010.

Section 4 of S.L. 2011, ch. 3 declared an

emergency retroactively to January 1, 2011. Approved February 15, 2011.

Section 2 of S.L. 2013, ch. 83 declared an emergency and made this section retroactive to January 1, 2013. Approved March 15, 2013.

63-3027. Computing Idaho taxable income of multistate or unitary corporations. — The Idaho taxable income of any multistate or unitary corporation transacting business both within and without this state shall be computed in accordance with the rules set forth in this section:

(a) As used in this section, unless the context otherwise requires:

(1) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from the acquisition, management, or disposition of tangible and intangible property when such acquisition, management, or disposition constitutes integral or necessary parts of the taxpayer's trade or business operations. Gains or losses and dividend and interest income from stock and securities of any foreign or domestic corporation shall be presumed to be income from intangible property, the acquisition, management, or disposition of which constitutes an integral part of the taxpayer's trade or business; such presumption may only be overcome by clear and convincing evidence to the contrary.

(2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(4) "Nonbusiness income" means all income other than business income.

(5) "Sales" means all gross receipts of the taxpayer not allocated under subsections (d) through (h) of this section.

(6) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(b) Any taxpayer having income from business activity which is taxable both within and without this state shall allocate and apportion such net income as provided in this section.

(c) For purposes of allocation and apportionment of income under this section, a taxpayer is taxable in another state if:

(1) In that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(d) Rents and royalties from real or tangible personal property, capital gains interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (e) through (h) of this section. Allocable nonbusiness income shall be limited to the total nonbusiness income received which is in excess of any related expenses which have been allowed as a deduction during the taxable year. In the case of allocable nonbusiness interest or dividends,

related expenses include interest on indebtedness incurred or continued to purchase or carry assets on which the interest or dividends are nonbusiness income.

(e)(1) Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are allocable to this state:

(i) If and to the extent that the property is utilized in this state, or

(ii) In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year, and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(f)(1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) The property had a situs in this state at the time of the sale, or

(ii) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state, unless such gains and losses constitute business income as defined in this section.

(g) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state unless such interest or dividends constitute business income as defined in this section.

(h)(1) Patent and copyright royalties are allocable to this state:

(i) If and to the extent that the patent or copyright is utilized by the payer in this state, or

(ii) If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patent product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(i)(1) Notwithstanding the election allowed in article III.1 of the multistate tax compact enacted as section 63-3701, Idaho Code, all business income shall be apportioned to this state under subsection (j) of this section by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two (2) times the sales factor, and the denominator of which is four (4), except as provided in paragraph (2) of this subsection.

(2) If a corporation, or a parent corporation of a combined group filing a combined report under sections 63-3027 and 63-3701, Idaho Code, is an electrical corporation as defined in section 61-119, Idaho Code, or is a telephone corporation as defined in section 62-603, Idaho Code, all business income of the corporation shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3).

(j)(1) In the case of a corporation or group of corporations combined under subsection (t) of this section, Idaho taxable income or loss of the corporation or combined group shall be determined as follows:

(i) From the income or loss of the corporation or combined group of corporations, subtract any nonbusiness income, and add any nonbusiness loss, included in the total,

(ii) Multiply the amounts determined under paragraph (1)(i) of this subsection by the Idaho apportionment percentage defined in subsection (i) of this section, taking into account, where applicable, the property, payroll and sales of all corporations, wherever incorporated, which are included in the combined group. The resulting product shall be the amount of business income or loss apportioned to Idaho.

(2) To the amount determined as apportioned business income or loss under paragraph (1)(ii) of this subsection, add nonbusiness income allocable entirely to Idaho under the provisions of this section or subtract nonbusiness loss allocable entirely to Idaho under this section. The resulting sum is the Idaho taxable income or loss of the corporation.

(3) In the case of a corporation not subject to subsection (t) of this section, the income or loss referred to in paragraph (1)(i) of this subsection shall be the taxable income of the corporation after making appropriate adjustments under the provisions of section 63-3022, Idaho Code.

(k) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(l) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental

rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(m) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the state tax commission may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(n) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

(o) Compensation is paid in this state if:

- (1) The individual's service is performed entirely within the state; or
- (2) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or
- (3) Some of the service is performed in the state and:

(i) The base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or

(ii) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(p) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(q) Sales of tangible personal property are in this state if:

- (1) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or
- (2) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:

(i) The purchaser is the United States government, or

(ii) The taxpayer is not taxable in the state of the purchaser.

(r) Sales, other than sales of tangible property, are in this state, if:

- (1) The income-producing activity is performed in this state; or
- (2) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(s) If the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the state tax commission may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) Separate accounting, provided that only that portion of general expenses clearly identifiable with Idaho business operations shall be allowed as a deduction;
- (2) The exclusion of any one (1) or more of the factors;
- (3) The inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(t) For purposes of this section and sections 63-3027B through 63-3027E, Idaho Code, the income of two (2) or more corporations, wherever incorporated, the voting stock of which is more than fifty percent (50%) owned directly or indirectly by a common owner or owners, when necessary to accurately reflect income, shall be allocated or apportioned as if the group of corporations were a single corporation, in which event:

(1) The Idaho taxable income of any corporation subject to taxation in this state shall be determined by use of a combined report which includes the income, determined under paragraph (2) of this subsection, of all corporations which are members of a unitary business, allocated and apportioned using apportionment factors for all corporations included in the combined report and methods set out in this section. The use of a combined report does not disregard the separate corporate identities of the members of the unitary group. Each corporation which is transacting business in this state is responsible for its apportioned share of the combined business income plus its nonbusiness income or loss allocated to Idaho, minus its net operating loss carryover or carryback.

(2) The income of a corporation to be included in a combined report shall be determined as follows:

(i) For a corporation incorporated in the United States or included in a consolidated federal corporation income tax return, the income to be included in the combined report shall be the taxable income for the corporation after making appropriate adjustments under the provisions of section 63-3022, Idaho Code;

(ii) For a corporation incorporated outside the United States, but not included in subsection (t)(2)(i) of this section, the income to be included in the combined report shall be the net income before income taxes of such corporation stated on the profit and loss statements of such corporation which are included within the consolidated profit and loss statement prepared for the group of related corporations of which the corporation is a member, which statement is prepared for filing with the United States securities and exchange commission. If the group of related companies is not required to file such profit and loss statement with the United States securities and exchange commission, the profit and loss statement prepared for reporting to shareholders and subject to review by an independent auditor may be used to obtain net income before income taxes. In the alternative, and subject to reasonable substantiation and consistent application by the group of related companies, adjustments may be made to the profit and loss statements of the corporation incorporated outside the United States, if necessary, to conform such statements to tax accounting standards as required by the Internal Revenue Code as if such corporation were incorporated in the United States and required to file a federal income tax return, subject to appropriate adjustments under the provisions of section 63-3022, Idaho Code;

(iii) If the income computation for a group under subparagraphs (i) and (ii) of this paragraph results in a loss, such loss shall be taken into

account in other years, subject to the provisions of subsections (b) and (c) of section 63-3022, Idaho Code; and

(iv) When one (1) or more corporations included in a combined report have excess inclusion income for a tax year that is taxable to those corporations pursuant to section 63-3011B, Idaho Code, the amount of such excess inclusion income shall be reported as the taxable income for those members of the combined group as provided by section 63-3011B, Idaho Code, and any net operating loss for that tax year or carried forward from an earlier tax year may be taken as deductions in other tax years, subject to the provisions of subsections (b) and (c) of section 63-3022, Idaho Code. In computing the net operating loss that may be used in another tax year for that corporation or other member of the combined return group, the excess inclusion income recognized as taxable income shall be deducted from gross income, as provided by treasury regulation 1.860E-1(a)(1).

(u) If compensation is paid in the form of a reasonable cash fee for the performance of management services directly for the United States government at the Idaho national laboratory or any successor organization, separate accounting for that part of the business activity without regard to other activity of the taxpayer in the state of Idaho or elsewhere shall be required; provided that only that portion of general expenses clearly identifiable with Idaho business operations of that activity shall be allowed as a deduction.

History.

1959, ch. 299, § 27, p. 613; am. 1961, ch. 328, § 10, p. 622; am. 1965, ch. 254, § 1, p. 639; am. 1969, ch. 319, § 9, p. 982; am. 1972, ch. 398, § 5, p. 1149; am. 1975, ch. 32, § 1, p. 52; am. 1979, ch. 250, § 1, p. 654; am. 1985,

ch. 114, § 2, p. 233; am. 1993, ch. 284, § 3, p. 958; am. 1994, ch. 247, § 2, p. 777; am. 1994, ch. 301, § 1, p. 948; am. 1995, ch. 111, § 27, p. 347; am. 1998, ch. 42, § 5, p. 175; am. 2007, ch. 10, § 2, p. 10; am. 2014, ch. 74, § 2, p. 192.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 74, added paragraph (t)(2)(iv).

emergency and made this section retroactive to January 1, 2014.

Effective Dates.

Section 3 of S.L. 2014, ch. 74 declared an

RESEARCH REFERENCES

A.L.R. — State corporate income taxation of foreign dividends. 17 A.L.R.6th 623.

Construction and application of Uniform Division of Income for Tax Purposes Act

(UDITPA) — Availability of relief from standard apportionment formula and other issues. 81 A.L.R.6th 97.

63-3027B. Water's-edge election. — (a) A qualified taxpayer, as defined in paragraph (3) of subsection (b) of this section whose income is subject to the tax imposed under this chapter, may elect to determine its income derived from or attributable to sources within this state pursuant to a water's-edge election in accordance with the provisions of this chapter, as modified by sections 63-3027B through 63-3027E, Idaho Code. A taxpayer

who makes a water's-edge election shall take into account the income and apportionment factors of all affiliated corporations in a unitary relationship with the taxpayer, other than corporations filing elections under section 936 of the Internal Revenue Code, and which either file a federal income tax return under the Internal Revenue Code or are included in a federal consolidated return.

(b) For purposes of this section:

(1) The phrase "over fifty percent (50%) of the voting stock directly or indirectly owned or controlled" shall be substituted for the phrase "at least eighty percent (80%)" each place it appears in section 1504 of the Internal Revenue Code.

(2) Any combined return shall include only corporations the voting stock of which is more than fifty percent (50%) owned directly or indirectly by a common owner or owners.

(3) A "qualified taxpayer" is a corporation which files, with the state income tax return on which the water's-edge election is made, a consent to the reasonable production of documents within the taxing jurisdiction. The consent shall remain in effect so long as the water's-edge election is in effect.

(4) "Water's-edge combined group" shall mean all corporations or entities properly includable in the election of a taxpayer in subsection (a) of this section.

(5) The only income of a foreign sales corporation to be taken into account shall be the income subject to federal taxation, taking into account the provisions of section 921 of the Internal Revenue Code.

(6) For each corporation within the combined group subject to tax by this chapter, a water's-edge election will be deemed to have been filed and consent given under paragraph (3) of this subsection upon the filing of a valid water's-edge election by any qualified taxpayer of the combined group. If during the period a water's-edge election is in effect, another corporation subject to tax by this state becomes a part of the combined group, the corporation is deemed to have made a water's-edge election and given consent under paragraph (3) of this subsection.

(c) A water's-edge election may be disregarded, and the income of the taxpayer determined without regard to the provisions of this section pursuant to those conditions which may be required by the state tax commission under subsection (b) of section 63-3027C, Idaho Code, if any corporation fails to comply with:

(1) The domestic disclosure spreadsheet filing requirements defined in section 63-3027E, Idaho Code; or

(2) This state's legal and procedural requirements.

History.

I.C., § 63-3027B, as added by 1986, ch. 342, § 1, p. 846; am. 1993, ch. 284, § 4, p. 958; am.

1994, ch. 247, § 3, p. 777; am. 2000, ch. 26, § 4, p. 45; am. 2009, ch. 2, § 1, p. 3.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 2, in subsection (a), deleted “Notwithstanding the provisions of subsections (s) and (t) of section 63-3027, Idaho Code” from the beginning and, in the last sentence, substituted “apportionment factors of all affiliated corporations” for

“apportionment factors of only affiliated corporations”; and added subsection (b)(6).

Effective Dates.

Section 2 of S.L. 2009, ch. 2 declared an emergency retroactively to January 1, 2009. Approved February 18, 2009.

63-3029. Credit for income taxes paid another state. — (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on the individual, an S corporation, partnership, limited liability company, estate or trust of which the individual is a shareholder, partner, member, or beneficiary (to the extent attributable to the individual as a result of the individual's share of the S corporation's, partnership's, limited liability company's, estate's or trust's taxable income in another state), for the taxable year by another state on income derived from sources therein while domiciled in Idaho and that is also subject to tax under this chapter.

(2) For purposes of this section:

(a) “State” shall include any state of the United States, the District of Columbia, or any possession or territory of the United States.

(b) Except as provided in subsection (3)(a)(i) of this section, “individual” shall include estates and trusts.

(c) References to “domiciled in” shall mean “a resident of” for purposes of computing the credit for trusts and estates.

(3)(a) Except as provided in subsection (3)(b) of this section:

(i) The credit provided under this section to an individual shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the adjusted gross income of the taxpayer derived from sources in the other state as modified by this chapter bears to the adjusted gross income of the taxpayer as modified by this chapter.

(ii) The credit provided under this section to an estate or trust shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the federal total income of the estate or trust derived from sources in the other state and taxed by that state bears to the federal total income of the estate or trust. “Federal total income of the estate or trust derived from sources in the other state” shall be determined as provided under section 63-3026A, Idaho Code, as if the estate or trust was a nonresident.

(b) When tax is paid to another state on income of an S corporation, partnership, limited liability company, estate or trust, the limitation calculated in subsection (3)(a) of this section with respect to that income shall be based on the proportion that the individual taxpayer's share of the entity's taxable income correctly reported to the other state under the laws of the other state bears to the individual's adjusted gross income, as modified by this chapter. This limitation shall apply whether the tax is paid to the other state by the individual or by the S corporation, partnership, limited liability company, estate or trust.

(c) The credit provided under this section shall further be limited to the tax paid to the other state.

(4) To substantiate the credit allowed under this section, the state tax commission may require a copy of any receipt showing payment of income taxes to the other state or a copy of any return or returns filed with such other state, or both.

(5) No credit allowed under this section shall be applied in calculating tax due under this chapter if the tax upon which the credit is based has been claimed as a deduction, unless the tax is restored to income on the Idaho return.

(6) The credit shall not be allowed if such other state allows a credit against taxes imposed by such state for taxes paid or payable under this chapter.

(7) For purposes of this section an income tax imposed on an S corporation, partnership, limited liability company, estate or trust includes:

(a) A direct tax imposed upon the income for the taxable year of the S corporation, partnership, limited liability company, estate or trust; and

(b) An excise or franchise tax that is measured by the income for the taxable year of the S corporation, partnership, limited liability company, estate or trust.

(8) For purposes of subsection (7) of this section, an excise or franchise tax is "measured by income" only if the statute imposing the excise or franchise tax provides that the base for the tax:

(a) Includes:

(i) Revenue from sales;

(ii) Revenue from services rendered; and

(iii) Income from investments; and

(b) Permits a deduction for one (1) or both of the following:

(i) The cost of goods, inventory or products with respect to revenue from sales; and

(ii) The cost of services rendered with respect to revenue from services rendered.

(9) A part-year resident is entitled to a credit, determined in the manner prescribed by the state tax commission, for income taxes paid to another state in regard to income which is:

(a) Earned while the taxpayer is domiciled or residing in this state; and

(b) Subject to tax in such other state.

(10) If the interest in an S corporation, partnership, limited liability company, estate or trust was held for less than the entire taxable year, the share attributable to the individual shall be allocated in the same manner as for federal purposes.

History.

1959, ch. 299, § 29, p. 613; am. 1961, ch. 328, § 12, p. 622; am. 1970, ch. 222, § 6, p. 621; am. 1975, ch. 106, § 1, p. 216; am. 1980, ch. 12, § 1, p. 25; am. 1982, ch. 8, § 1, p. 11;

am. 1995, ch. 111, § 30, p. 347; am. 1996, ch. 422, § 1, p. 1446; am. 1998, ch. 10, § 1, p. 108; am. 2007, ch. 191, § 1, p. 562; am. 2008, ch. 315, § 1, p. 874; am. 2009, ch. 216, § 1, p. 675; am. 2012, ch. 222, § 1, p. 607.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 315, in subsection (6), substituted “chapter” for “act”; and in subsection (9)(a), inserted “or residing.”

The 2009 amendment, by ch. 216, throughout the section, inserted “estate” or similar language preceding “or trust”; added the subsection (2)(a) designation and subsections (2)(b) and (2)(c); added the subsection (3)(a)(i) designation, and therein inserted “to an individual” and deleted the last sentence, which read: “This limitation applies to all individuals”; added subsection (3)(a)(ii); and in subsection (10), inserted “estate or trust.”

The 2012 amendment by ch. 222, inserted “as amended by this chapter” at the end of the first sentence in subsection (b) and rewrote paragraph (8)(b), which formerly read, “Permits a deduction for the cost of goods sold and the cost of services rendered.”

Effective Dates.

Section 2 of S.L. 2008, ch. 315 declared an emergency. Approved March 31, 2008. Section 2 of S.L. 2008, ch. 315 further provided that this act “shall apply to all proceedings and claims before the state tax commission, the board of tax appeals or the courts of this state on the effective date of this act.”

Section 2 of S.L. 2009, ch. 216 declared an emergency retroactively to January 1, 2009, and applies the act to all proceedings pending before the State Tax Commission, the Board of Tax Appeals or the courts of state of Idaho on the effective date of this act [January 1, 2009]. Approved April 23, 2009.

Section 2 of S.L. 2012, ch. 222 declared an emergency and made this section retroactive to January 1, 2012. Approved April 3, 2012.

63-3029A. Income tax credit for charitable contributions — Limitation. [Effective until January 1, 2016.] — At the election of the taxpayer, there shall be allowed, subject to the applicable limitations provided herein, as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to fifty percent (50%) of the aggregate amount of charitable contributions made by such taxpayer during the year to a nonprofit corporation, fund, foundation, trust, or association organized and operated exclusively for the benefit of institutions of higher learning located within the state of Idaho, including a university related research park, to nonprofit private or public institutions of elementary, secondary, or higher education or their foundations located within the state of Idaho, to a nonprofit corporation, fund, foundation, trust or association which is: (i) organized and operated exclusively for the benefit of elementary or secondary education institutions located within the state of Idaho; (ii) officially recognized and designated as any such elementary or secondary education institution’s sole designated supporting organization; and (iii) qualified to be exempt from federal taxation under the terms of section 501(c)(3) of the Internal Revenue Code, to Idaho education public broadcast system foundations within the state of Idaho, to the Idaho state historical society or its foundation, to the council for the deaf and hard of hearing, to the developmental disabilities council, to the commission for the blind and visually impaired, to the commission on Hispanic affairs, to the state independent living council, to the Idaho commission for libraries and to public libraries or their foundations and library districts or their foundations located within the state of Idaho, to nonprofit public or private museums or their foundations located within the state of Idaho and to dedicated accounts within the Idaho community foundation inc. that exclusively support the charitable purposes otherwise qualifying for the tax credit authorized under the provisions of this section.

(1) In the case of a taxpayer other than a corporation, the amount

allowable as a credit under this section for any taxable year shall not exceed fifty percent (50%) of such taxpayer's total income tax liability imposed by section 63-3024, Idaho Code, for the year, or five hundred dollars (\$500), whichever is less.

(2) In the case of a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed ten percent (10%) of such corporation's total income or franchise tax liability imposed by sections 63-3025 and 63-3025A, Idaho Code, for the year, or five thousand dollars (\$5,000), whichever is less.

For the purposes of this section, "contribution" means monetary donations reduced by the value of any benefit received in return such as food, entertainment or merchandise.

For the purposes of this section, "institution of higher learning" means only an educational institution located within this state meeting all of the following requirements:

- (a) It maintains a regular faculty and curriculum and has a regularly enrolled body of students in attendance at the place where its educational activities are carried on.
- (b) It regularly offers education above the twelfth grade.
- (c) It is accredited by the northwest association of schools and colleges, or by the state board of education.

For the purposes of this section, a nonprofit institution of secondary or higher education means a private nonprofit secondary or higher educational institution located within the state of Idaho, which is accredited by the northwest association of schools and colleges, or by the state board of education. A nonprofit private institution of elementary education means a private nonprofit elementary educational institution located within the state of Idaho and approved by the state board of education.

History.

I.C., § 63-3029A, as added by 1976, ch. 58, § 1, p. 198; am. 1977, ch. 249, § 1, p. 730; am. 1978, ch. 177, § 1, p. 406; am. 1984, ch. 286, § 14, p. 660; am. 1986, ch. 219, § 1, p. 557; am. 1987, ch. 304, § 1, p. 644; am. 1992, ch.

10, § 1, p. 16; am. 1994, ch. 211, § 1, p. 667; am. 1998, ch. 59, § 1, p. 216; am. 1999, ch. 361, § 1, p. 955; am. 2001, ch. 370, § 1, p. 1294; am. 2006, ch. 235, § 31, p. 701; am. 2010, ch. 274, § 1, p. 711; am. 2010, ch. 354, § 2, p. 930; am. 2013, ch. 40, § 1, p. 82.

STATUTORY NOTES

Repealed effective January 1, 2016. This section is repealed effective January 1, 2016, pursuant to S.L. 2010, ch. 354, § 3. For this section as effective January 1, 2016, see the following section, also numbered § 63-3029A.

Amendments.

The 2010 amendment, by ch. 274, in the introductory paragraph, inserted the language beginning "to a nonprofit corporation, fund, foundation, trust or association" and ending "under the terms of section 501(c)(3) of the Internal Revenue Code."

The 2010 amendment, by ch. 354, in the introductory paragraph, inserted "to the

council for the deaf and hard of hearing, to the developmental disabilities council, to the commission for the blind and visually impaired, to the commission on hispanic affairs, to the state independent living council"; in subsection (1), substituted "fifty percent (50%)" for "twenty percent (20%)" and "five hundred dollars (\$500)" for "one hundred dollars (\$100)"; in subsection (2), substituted "five thousand dollars (\$5,000)" for "one thousand dollars (\$1,000)"; and added the first paragraph following subsection (2).

The 2013 amendment, by ch. 40, added "and to dedicated accounts within the Idaho community foundation inc. that exclusively support the charitable purposes otherwise

qualifying for the tax credit authorized under the provisions of this section” at the end of the introductory paragraph

Legislative Intent.

Section 1 of S.L. 2010, ch. 354 provided “Legislative Intent. It is the intent of the Legislature that trustee and benefit payments for the fiscal year July 1, 2010, through June 30, 2011, and for fiscal years thereafter for the Council for the Deaf and Hard of Hearing, the Developmental Disabilities Council, the Commission for the Blind and Visually Impaired, the Commission on Hispanic Affairs, and the State Independent Living Council be increased by contributions received by those entities pursuant to Section 2 of this act.”

Federal References.

Section 501(c)(3) of the Internal Revenue Code, referred to in the first paragraph, is codified as 26 USCS § 501(c)(3).

Compiler’s Notes.

For more on the Idaho community foundation, inc., see <http://www.idcomfdn.org/>.

Effective Dates.

Section 2 of S.L. 2010, ch. 274 declared an emergency retroactively to January 1, 2010. Approved April 8, 2010.

Section 5 of S.L. 2010, ch. 354 provided that the act should take effect on and after January 1, 2011.

Section 3 of S.L. 2013 declared an emergency and made this section retroactive to January 1, 2013. Approved March 8, 2013.

63-3029A. Income tax credit for charitable contributions — Limitation. [Effective January 1, 2016.] — At the election of the taxpayer, there shall be allowed, subject to the applicable limitations provided herein, as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to fifty percent (50%) of the aggregate amount of charitable contributions made by such taxpayer during the year to a nonprofit corporation, fund, foundation, trust, or association organized and operated exclusively for the benefit of institutions of higher learning located within the state of Idaho, including a university related research park, to nonprofit private or public institutions of elementary, secondary, or higher education or their foundations located within the state of Idaho, to Idaho education public broadcast system foundations within the state of Idaho, to the Idaho state historical society or its foundation, to the Idaho commission for libraries and to public libraries or their foundations and library districts or their foundations located within the state of Idaho, to nonprofit public or private museums or their foundations located within the state of Idaho and to dedicated accounts within the Idaho community foundation inc. that exclusively support the charitable purposes otherwise qualifying for the tax credit authorized under the provisions of this section.

(1) In the case of a taxpayer other than a corporation, the amount allowable as a credit under the provisions of this section for any taxable year shall not exceed twenty percent (20%) of such taxpayer’s total income tax liability imposed by section 63-3024, Idaho Code, for the year, or one hundred dollars (\$100), whichever is less.

(2) In the case of a corporation, the amount allowable as a credit under the provisions of this section for any taxable year shall not exceed ten percent (10%) of such corporation’s total income or franchise tax liability imposed by sections 63-3025 and 63-3025A, Idaho Code, for the year, or one thousand dollars (\$1,000), whichever is less.

For the purposes of this section, “contribution” means monetary donations reduced by the value of any benefit received in return such as food, entertainment or merchandise.

For the purposes of this section, “institution of higher learning” means

only an educational institution located within this state meeting all of the following requirements:

- (a) It maintains a regular faculty and curriculum and has a regularly enrolled body of students in attendance at the place where its educational activities are carried on.
- (b) It regularly offers education above the twelfth grade.
- (c) It is accredited by the northwest association of schools and colleges, or by the state board of education.

For the purposes of this section, a nonprofit institution of secondary or higher education means a private nonprofit secondary or higher educational institution located within the state of Idaho, which is accredited by the northwest association of schools and colleges, or by the state board of education. A nonprofit private institution of elementary education means a private nonprofit elementary educational institution located within the state of Idaho and approved by the state board of education.

History.

I.C., § 63-3029A, as added by 2010, ch. 354, § 4, p. 930; am. 2013, ch. 40, § 2, p. 82.

STATUTORY NOTES

Prior Laws.

Section 63-3029A, which comprised I.C., § 63-3029A, as added by 1976, ch. 58, § 1, p. 198; am. 1977, ch. 249, § 1, p. 730; am. 1978, ch. 177, § 1, p. 406; am. 1984, ch. 286, § 14, p. 660; am. 1986, ch. 219, § 1, p. 557; am. 1987, ch. 304, § 1, p. 644; am. 1992, ch. 10, § 1, p. 16; am. 1994, ch. 211, § 1, p. 667; am. 1998, ch. 59, § 1, p. 216; am. 1999, ch. 361, § 1, p. 955; am. 2001, ch. 370, § 1, p. 1294; am. 2006, ch. 235, § 31, p. 701; am. 2010, ch. 274, § 1, p. 711; am. 2010, ch. 354, § 2, p. 930, will be repealed effective July 1, 2016, pursuant to S.L. 2010, ch. 354, § 3.

Amendments.

The 2013 amendment, by ch. 40, added “and to dedicated accounts within the Idaho community foundation inc. that exclusively support the charitable purposes otherwise qualifying for the tax credit authorized under the provisions of this section” at the end of the introductory paragraph.

Legislative Intent.

Section 1 of S.L. 2010, ch. 354 provided “Legislative Intent. It is the intent of the

Legislature that trustee and benefit payments for the fiscal year July 1, 2010, through June 30, 2011, and for fiscal years thereafter for the Council for the Deaf and Hard of Hearing, the Developmental Disabilities Council, the Commission for the Blind and Visually Impaired, the Commission on Hispanic Affairs, and the State Independent Living Council be increased by contributions received by those entities pursuant to Section 2 of this act.”

Compiler's Notes.

For this section as effective until January 1, 2016, see the preceding section, also numbered § 63-3029A.

For more on the Idaho community foundation, inc., see <http://www.idcomfdn.org/>.

Effective Dates.

Section 5 of S.L. 2010, ch. 354 provided that this section should take effect on and after January 1, 2016.

Section 3 of S.L. 2013 provided that section 2 of that act should take effect on and after January 1, 2016. Approved March 8, 2013.

63-3029B. Income tax credit for capital investment. — (1) At the election of the taxpayer there shall be allowed, subject to the applicable limitations provided herein as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to the sum of:

- (a) The tax credit carryovers; and
 - (b) The tax credit for the taxable year.
- (2) The maximum allowable amount of the credit for the current taxable

year shall be three percent (3%) of the amount of qualified investments made during the taxable year.

(3) As used in this section "qualified investment" means certain property which:

(a)(i) Is eligible for the federal investment tax credit, as defined in sections 46(c) and 48 of the Internal Revenue Code subject to the limitations provided for certain regulated companies in section 46(f) of the Internal Revenue Code and is not a motor vehicle under eight thousand (8,000) pounds gross weight; or

(ii) Is qualified broadband equipment as defined in section 63-3029I, Idaho Code; and

(b) Is acquired, constructed, reconstructed, erected or placed into service after December 31, 1981; and

(c) Has a situs in Idaho as determined under subsection (9) of this section.

(4)(a) For qualified investments placed in service in 2003 and thereafter, a taxpayer, other than a person whose rate of charge or rate of return, or both, is regulated or limited according to federal or state law, may elect, in lieu of the credit provided by this section, a two (2) year exemption from all taxes on personal property on the qualified investment. The exemption from personal property tax shall apply to the year the election is filed as provided in this section and the immediately following year. The election provided by this paragraph is available only to a taxpayer whose Idaho taxable income, before application of net operating losses carried back or forward, in the second preceding taxable year in which the investment is placed in service is negative.

(b) The election shall be made in the form prescribed by the state tax commission and shall include a specific description and location of all qualified investments placed into service and located in the jurisdiction of the assessing authority, a designation of the specific assets for which the exemption is claimed, and such other information as the state tax commission may require. The election must be made by including the election form with the listing of personal property required by section 63-302, Idaho Code, or, in the case of operating property assessed under chapter 4, title 63, Idaho Code, with the operator's statement required by section 63-404, Idaho Code. Once made the election is irrevocable. If no election is made, the election is not otherwise available. A copy of the election form must also be attached to the original income tax return due for the taxable year in which the claim was made.

(c) The state tax commission and the various county assessors are authorized to exchange information as necessary to properly coordinate the exemption provided in this subsection. Information disclosed to county officials under this subsection may be used only to determine the validity or amount of a taxpayer's entitlement to the exemption provided in this section, and is not otherwise subject to public disclosure as provided in section 9-340D, Idaho Code.

(d) In the event that an investment in regard to which the election under this subsection was made is determined by the state tax commission:

(i) To not be a qualified investment, or

- (ii) To have ceased to qualify during the recapture period, or
- (iii) To be otherwise not qualified for the election,

the taxpayer shall be subject to recapture of the property tax benefit.

(e) The benefit to be recaptured in subsection (4)(d) of this section shall be computed in the manner required in subsection (7) of this section and such recapture amount shall be subject to assessment in the same manner as a deficiency in tax under this chapter. For purposes of calculating the recapture, the property tax benefit shall be:

(i) In the case of locally assessed property located in a single county or nonapportioned centrally assessed property, the market value of exempted property times the average property tax levy for that county in the year or years for which the exemption was claimed.

(ii) In the case of other centrally assessed property and property located in more than one (1) county, the market value of exempted property times the average urban property tax levy of the state as determined by the state tax commission in each of the years for which the exemption was claimed.

(f) In the event that a recapture of the exemption is required under this subsection (4), the person claiming the exemption shall report the event to the state tax commission in the manner the state tax commission may by rule require. The report shall be due no later than the due date of that person's income tax return under this chapter for the taxable year in which the event occurs. The recapture amount is due and payable with the report. Any amount of recapture not paid is a deficiency within the meaning of section 63-3044, Idaho Code.

(g) All moneys collected by the state tax commission pursuant to this subsection, which amounts are continuously appropriated for this purpose, shall be deposited with the state treasurer and placed in the state refund account, as provided by section 63-3067, Idaho Code, to be remitted to the county within which the property was located that was not a qualified investment or ceased to qualify during the recapture period. The county shall distribute this remittance to all appropriate taxing districts based on the proportion each appropriate taxing district's levy is to the total of all the levies of the taxing districts for the tax code area where the property was located for each year the exemption was granted. If any taxing district is dissolved or disincorporated, the proportionate share of the remittance to be distributed to that taxing district shall be deposited in the county current expense fund.

(h) For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this subsection shall be treated as property tax revenue by taxing districts.

(5) Notwithstanding the provisions of subsections (1) and (2) of this section, the amount of the credit allowed shall not exceed fifty percent (50%) of the tax liability of the taxpayer. The tax liability of the taxpayer shall be the tax after deducting the credit allowed by section 63-3029, Idaho Code.

(6) If the sum of credit carryovers from the credit allowed by subsection (2) of this section and the amount of credit for the taxable year from the credit allowed by subsection (2) of this section exceed the limitation imposed

by subsection (5) of this section for the current taxable year, the excess attributable to the current taxable year's credit shall be an investment credit carryover to the fourteen (14) succeeding taxable years so long as the qualified investment property for which the unused credit was granted otherwise remains a qualified investment as determined under subsection (3) of this section in each of the taxable years during the recapture period. In the case of a group of corporations filing a combined report under section 63-3027, Idaho Code, or sections 63-3027B through 63-3027E, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the provisions of subsection (5) of this section, instead of carried over. The entire amount of unused credit shall be carried forward to the earliest of the succeeding years, wherein the oldest available unused credit shall be used first. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member who earned the credit is no longer included in the combined group.

(7) Any recapture of the credit allowed by subsection (2) of this section on property disposed of or ceasing to qualify, prior to the close of the recapture period, shall be determined according to the applicable recapture provisions of the Internal Revenue Code. In the case of a unitary group of corporations, the increase in tax due to the recapture of investment tax credit must be reported by the member of the group who earned the credit regardless of which member claimed the credit against tax.

(8) For the purpose of determining whether property placed in service is a "qualified investment" as defined in subsection (3) of this section, the provisions of section 49 of the Internal Revenue Code shall be disregarded. "Qualified investment" shall not include any amount for which a deduction is allowed under section 168(k) or section 179 of the Internal Revenue Code in computing Idaho taxable income.

(9) For purposes of this section, property has a situs in Idaho during a taxable year if it is used in Idaho at any time during the taxable year. Property not used in Idaho during a taxable year does not have a situs in Idaho in the taxable year during which the property is not used in Idaho or in any subsequent taxable year. The Idaho situs of property must be established by records maintained by the taxpayer which are created reasonably contemporaneously with the use of the property.

(10) In the case of property used both in and outside Idaho, the taxpayer, electing to claim the credit provided in this section, must elect to compute the qualified investment in property with a situs in Idaho for all such investments first qualifying during that year in one (1), but only one (1), of the following ways:

(a) The amount of each qualified investment in a specific asset shall be separately computed based on the percentage of the actual use of the property in Idaho by using a measure of the use, such as total miles or total machine hours, that most accurately reflects the beneficial use during the taxable year in which it is first acquired, constructed, reconstructed, erected or placed into service; provided, that the asset is placed in service more than ninety (90) days before the end of the taxable year.

In the case of assets acquired, constructed, reconstructed, erected or placed into service within ninety (90) days prior to the end of the taxable year in which the investment first qualifies, the measure of the use of that asset within Idaho for that year shall be based upon the percentage of use in Idaho during the first ninety (90) days of use of the asset;

(b) The investment in qualified property used both inside and outside Idaho during the taxable year in which it is first acquired, constructed, reconstructed, erected or placed into service shall be multiplied by the percent of the investment that would be included in the numerator of the Idaho property factor determined pursuant to section 63-3027, Idaho Code, for the same year.

(11) References to sections 46, 48 and 49 of the “Internal Revenue Code” mean those sections as they existed in the Internal Revenue Code of 1986 prior to November 5, 1990.

History.

I.C., § 63-3029B, as added by 1982, ch. 48, § 1, p. 72; am. 1987, ch. 319, § 1, p. 671; am. 1992, ch. 153, § 1, p. 459; am. 1993, ch. 2, § 1, p. 3; am. 1994, ch. 247, § 6, p. 777; am. 1995, ch. 94, § 1, p. 269; am. 1996, ch. 40, § 4, p. 103; am. 2000, ch. 457, § 1, p. 1430; am. 2000,

ch. 479, § 5, p. 1651; am. 2001, ch. 270, § 6, p. 977; am. 2001, ch. 386, § 5, p. 1348; am. 2003, ch. 345, § 1, p. 923; am. 2004, ch. 204, § 1, p. 621; am. 2005, ch. 23, § 1, p. 61; am. 2006, ch. 195, § 2, p. 599; am. 2008, ch. 319, § 3, p. 883; am. 2011, ch. 271, § 1, p. 738; am. 2012, ch. 40, § 1, p. 123.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 319, added the reference to section 168(k) of the Internal Revenue Code in subsection (8).

The 2011 amendment, by ch. 271, in subsection (8), inserted “Idaho” near the end; and in subsection (11), deleted “Only for the purposes of subsections (3)(a) and (8) of this section” from the beginning, inserted “46, 48 and 49” and substituted “mean those sections” for “mean the sections referred to.”

The 2012 amendment, by ch. 40, inserted “as determined under subsection (9) of this section” at the end of paragraph (3)(c); in subsection (6), inserted “so long as the qualified investment property for which the unused credit was granted otherwise remains a qualified investment as determined under subsection (3) of this section in each of the taxable years during the recapture period” at the end of the first sentence and deleted “so long as the qualified investment property for which the unused credit was granted still

maintains Idaho situs” from the end of the third sentence; and deleted the former third sentence of subsection (9), which read, “No credit or carryover of credit is permitted under this section if the credit or carryover relates to property that does not have a situs in Idaho during the taxable year for which the credit or carryover is claimed.”

Federal References.

The references to the Internal Revenue Code throughout this section are codified throughout title 26 of the United States Code.

Effective Dates.

Section 4 of S.L. 2008, ch. 319 declared an emergency retroactively to January 1, 2008. Approved March 31, 2008.

Section 2 of S.L. 2011, ch. 271 declared an emergency retroactively to January 1, 2010. Approved April 8, 2011.

Section 2 of S.L. 2012, ch. 40 declared an emergency and made this section retroactive to January 1, 2012. Approved March 6, 2012.

63-3029E. Definitions — Construction of terms. [Null and void, effective January 1, 2017.] — As used in this section and in section 63-3029EE, Idaho Code:

(1)(a) “New employee” means a person subject to Idaho income tax withholding whether or not any amounts are required to be withheld, employed by the taxpayer in a trade or business, and covered for unemployment insurance purposes under chapter 13, title 72, Idaho Code,

during the taxable year for which the credit allowed by section 63-3029EE, Idaho Code, is claimed. A person shall be deemed to be so engaged if such person performs duties on:

- (i) A regular full-time basis; or
- (ii) A part-time basis if such person is customarily performing such duties at least twenty (20) hours per week.

No credit shall be earned unless the new employee shall have performed such duties for the taxpayer for a minimum of nine (9) months during the taxable year for which the credit is claimed.

(b) The provisions of paragraph (a) of this subsection notwithstanding, no credit shall be allowed for employment of persons by a taxpayer who acquires a trade or business from another taxpayer or who operates in a place of business the same or a substantially identical trade or business as operated by another taxpayer within the prior twelve (12) months, except as the prior taxpayer would have qualified under the provisions of paragraph (c) of this subsection. Employees transferred from a related taxpayer shall not be included in the computation of the credit.

(c) The number of employees during any taxable year for any taxpayer shall be the mathematical average of the number of employees reported to the Idaho department of labor for employment security purposes during the twelve (12) months of the taxable year that qualified under paragraph (a) of this subsection. In the event the business is in operation for less than the entire taxable year, the number of employees of the business for the year shall be the average number actually employed during the months of operation, providing that the qualifications of paragraph (a) of this subsection are met.

(2) "Revenue-producing enterprise" shall be as defined in section 63-3022H, Idaho Code.

(3) "Same or a substantially identical trade or business" means a trade or business in which the products produced or sold, or the activities conducted are the same in character and use and are produced, sold or conducted in the same manner as, or for the same types of customers as, the products or activities produced, sold or conducted in another trade or business.

History.

I.C., § 63-3029E, as added by 2012, ch. 233,
§ 1, p. 649.

STATUTORY NOTES

Repealed effective January 1, 2017.
Section 3 of S.L. 2012, ch. 233 provided that the act "shall be null, void and of no force and effect on and after January 1, 2017."

Effective Dates.

Section 3 of S.L. 2012, ch. 233 declared an

emergency and provided "this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2011."

63-3029F. Special credit available — New employees. [Null and void.]

Null and void, pursuant to S.L. 2011, ch. 318, § 5, effective January 1, 2014.

History.

I.C., § 63-3029F, as added by 2001, ch. 386, § 15, p. 1348; am. 2003, ch. 10, § 5, p. 22; am.

2004, ch. 347, § 1, p. 1038; am. 2005, ch. 23, § 3, p. 61.

STATUTORY NOTES**Compiler's Notes.**

Former § 63-3029F, which comprised I.C., § 63-3029F, as added by 2001, ch. 386, § 15, p. 1348; am. 2003, ch. 10, § 5, p. 22; am. 2004,

ch. 347, § 1, p. 1038; am. 2005, ch. 23, § 3, p. 61; am. 2011, ch. 318, § 3, p. 925, became null and void pursuant to S.L. 2011, ch. 318, § 5, effective January 1, 2014.

63-3029G. Credits for research activities conducted in this state — Carry forward. —

(1)(a) Subject to the limitations of this section, there shall be allowed to a taxpayer a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, for increasing research activities in Idaho.

(b) The credit allowed by subsection (1)(a) of this section shall be the sum of:

(i) Five percent (5%) of the excess of qualified research expenses for research conducted in Idaho over the base amount; and

(ii) Five percent (5%) basic research payments allowable under subsection (e) of section 41 of the Internal Revenue Code for basic research conducted in Idaho.

(c) The credit allowed by subsection (1)(a) of this section shall be computed without regard to the calculation of the alternative incremental credit provided for in section 41(c)(4) of the Internal Revenue Code or the alternative simplified credit provided for in section 41(c)(5) of the Internal Revenue Code.

(2) As used in this section:

(a) The terms “qualified research expenses,” “qualified research,” “basic research payments” and “basic research” shall be as defined in section 41 of the Internal Revenue Code except that the research must be conducted in Idaho.

(b) The term “base amount” shall mean an amount calculated as provided in sections 41(c) and 41(h) of the Internal Revenue Code, except that:

(i) A taxpayer's gross receipts include only those gross receipts attributable to sources within this state as provided in subsections (q) and (r) of section 63-3027, Idaho Code; and

(ii) Notwithstanding section 41(c) of the Internal Revenue Code, for purposes of calculating the base amount, a taxpayer:

(A) May elect to be treated as a start-up company as provided in section 41(c)(3)(B) of the Internal Revenue Code, regardless of whether the taxpayer meets the requirements of section 41(c)(3)(B)(i)(I) or (II) of the Internal Revenue Code; and

(B) May not revoke an election to be treated as a start-up company.

(3) The credit allowed by subsection (1)(a) of this section together with any credits carried forward under subsection (5) of this section shall not exceed the amount of tax due under sections 63-3024, 63-3025 and 63-3025A, Idaho Code, after allowance for all other credits permitted by this chapter. When credits earned in more than one (1) taxable year are available, the oldest credits shall be applied first.

(4) In the case of a group of corporations filing a combined report under subsection (t) of section 63-3027, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group. For a combined group of corporations, any member of the group may claim credit carried forward unless the member who earned the credit is no longer included in the combined group.

(5) The credit allowed by subsection (1)(a) of this section shall be claimed for the taxable year during which the taxpayer qualifies for the credit. If the credit exceeds the limitation under subsection (3) of this section, the excess amount may be carried forward for a period that does not exceed the next fourteen (14) taxable years.

(6) In addition to other needed rules, the state tax commission may promulgate rules prescribing, in the case of S corporations, partnerships, trusts or estates, a method of attributing the credit under this section to the shareholders, partners or beneficiaries in proportion to their share of the income from the S corporation, partnership, trust or estate.

History.

I.C., § 63-3029G, as added by 2001, ch. 386, § 6, p. 1348; am. 2002, ch. 35, § 1, p. 66; am.

2004, ch. 345, § 1, p. 1025; am. 2010, ch. 44, § 2, p. 78.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 44, in paragraph (1)(a), deleted “for taxable years after January 1, 2001” preceding “there shall be allowed” and “beginning, at the election of the taxpayer, either:” from the end; deleted paragraphs (1)(a)(i) and (1)(a)(ii); rewrote paragraph (1)(c), which formerly read: “Subject to the limitation in subsection (3) of this section, a taxpayer making the election permitted by subsection (1)(a)(i) of this section, credit for research activities occurring prior to the beginning of the taxpayer’s taxable year beginning in 2001 shall be claimed on the taxpayer’s return for its taxable year 2001 in addition to credit relating to activity in that year.”; deleted former paragraph (2)(b)(i),

which read: “The base amount does not include the calculation of the alternative incremental credit provided for in section 41(c)(4) of the Internal Revenue Code”; and redesignated paragraphs (2)(b)(ii) and (2)(b)(iii) as present paragraphs (2)(b)(i) and (2)(b)(ii), respectively.

Federal References.

Section 41 of the Internal Revenue Code, referred to throughout this section, is codified as 26 U.S.C.S. § 41.

Effective Dates.

Section 4 of S.L. 2010, ch. 44 declared an emergency retroactively to January 1, 2010 and approved March 15, 2010.

63-3029I. Income tax credit for investment in broadband equipment. — (1) Subject to the limitations of this section, for taxable years beginning after January 1, 2001, there shall be allowed to a taxpayer a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025

and 63-3025A, Idaho Code, for qualified expenditures in qualified broadband equipment in Idaho.

(2) The credit permitted in subsection (1) of this section shall be three percent (3%) of the qualified investment in qualified broadband equipment in Idaho and shall be in addition to the credit for capital investment permitted by section 63-3029B, Idaho Code.

(3) As used in this section the term:

(a) "Qualified investment" shall be as defined in section 63-3029B, Idaho Code.

(b) "Qualified broadband equipment" means equipment that qualifies for the credit for capital investment permitted by section 63-3029B, Idaho Code, and is capable of transmitting signals at a rate of at least two hundred thousand (200,000) bits per second to a subscriber and at least one hundred twenty-five thousand (125,000) bits per second from a subscriber, and

(i) In the case of a telecommunications carrier, such qualifying equipment shall be necessary to the provision of broadband service and an integral part of a broadband network. "Telecommunications carrier" has the meaning given such term by section 47 U.S.C. 153 of the communications act of 1934, as amended, but does not include a commercial mobile service provider.

(ii) In the case of a commercial mobile service carrier, such qualifying equipment shall extend from the subscriber side of the mobile telecommunications switching office to a transmitting/receiving antenna, including such antenna, on the outside of the structure in which the subscriber is located. "Commercial mobile service carrier" means any person authorized to provide commercial mobile radio service to subscribers as defined in section 20.3 of title 47, Code of Federal Regulations (10-1-99 ed.), as amended.

(iii) In the case of a cable or open video system operator, such qualifying equipment shall extend from the subscriber's side of the headend to the outside of the structure in which the subscriber is located. The terms "cable operator" and "open video system operator" have the meanings given such terms by sections 602(5) and 653, respectively, of the communications act of 1934, as amended.

(iv) In the case of a satellite carrier or a wireless carrier other than listed above, such qualifying equipment is only that equipment that extends from a transmitting/receiving antenna, including such antenna, which transmits and receives signals to or from multiple subscribers to a transmitting/receiving antenna on the outside of the structure in which the subscriber is located. "Satellite carrier" means any person using the facilities of a satellite or satellite services licensed by the federal communications commission and operating a fixed-satellite service or direct broadcast satellite services to provide point-to-multipoint distribution of signals. "Other wireless carrier" means any person, other than a telecommunications carrier, commercial mobile service carrier, cable operator, open video operator, or satellite carrier, providing broadband services to subscribers through the radio transmission of energy.

(v) In the case of packet switching equipment, such packet equipment installed in connection with other qualifying equipment listed in subsections (3)(b)(i) through (3)(b)(iv) of this section, provided it is the last in a series of equipment that transmits signals to a subscriber or the first in a series of equipment that transmits signals from a subscriber. "Packet switching" means controlling or routing the path of a digital transmission signal which is assembled into packets or cells.

(vi) In the case of multiplexing and demultiplexing equipment, such equipment only to the extent that it is deployed in connection with providing broadband services in locations between packet switching equipment and the structure in which the subscriber is located. "Multiplexing" means the transmission of two (2) or more signals over a communications circuit without regard to the communications technology.

(vii) Any property not primarily used to provide services in Idaho to public subscribers is not qualified broadband equipment.

(4) No equipment described in subsections (3)(b)(i) through (3)(b)(vi) of this section shall qualify for the credit provided in subsection (1) of this section until the taxpayer applies to and obtains from the Idaho public utilities commission an order confirming that the installed equipment is qualified broadband equipment. Applications submitted to the commission shall be governed by the commission's rules of procedure. The commission may issue procedural orders necessary to implement this section.

(5) The credit allowed by subsection (1) of this section together with any credits carried forward under subsection (7) of this section shall not, in any one (1) taxable year, exceed the lesser of:

(a) The amount of tax due under sections 63-3024, 63-3025 and 63-3025A, Idaho Code, after allowance for all other credits permitted by this chapter; or

(b) Seven hundred fifty thousand dollars (\$750,000).

When credits earned in more than one (1) taxable year are available, the oldest credits shall be applied first.

(6) In the case of a group of corporations filing a combined report under subsection (t) of section 63-3027, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the provisions of subsection (7) of this section, instead of carried over. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member who earned the credit is no longer included in the combined group.

(7) If the credit allowed by subsection (1) of this section exceeds the limitation under subsection (5) of this section, the excess amount may be carried forward for a period that does not exceed the next fourteen (14) taxable years.

(8) In the event that qualified broadband equipment upon which the credit allowed by this section has been used ceases to qualify for the credit allowed by section 63-3029B, Idaho Code, or is subject to recapture of that credit, the recapture of credit under this section shall be in the same proportion and subject to the same provisions as the amount of credit required to be recaptured under section 63-3029B, Idaho Code.

(9)(a) Subject to the requirements of this subsection, a taxpayer who earns and is entitled to the credit or to an unused portion of the credit allowed by this section may transfer all or a portion of the unused credit to:

- (i) Another taxpayer required to file a return under this chapter; or
- (ii) To an intermediary for its use or for resale to a taxpayer required to file a return under this chapter.

In the event of either such a transfer, the transferee may claim the credit on the transferee's income tax return originally filed during the calendar year in which the transfer takes place and, in the case of carryover of the credit, on the transferee's returns for the number of years of carryover available to the transferor at the time of the transfer unless earlier exhausted.

(b) Before completing a transfer under this subsection, the transferor shall notify the state tax commission of its intention to transfer the credit and the identity of the transferee. The state tax commission shall provide the transferor with a written statement of the amount of credit available under this section as then appearing in the commission's records and the number of years the credit may be carried over. The transferee shall attach a copy of the statement to any return in regard to which the transferred credit is claimed.

(c) In the event that after the transfer the state tax commission determines that the amount of credit properly available under this section is less than the amount claimed by the transferor of the credit or that the credit is subject to recapture, the commission shall assess the amount of overstated or recaptured credit as taxes due from the transferor and not the transferee. The assessment shall be made in the manner provided for a deficiency in taxes under this chapter.

(10) In addition to other needed rules, the state tax commission may promulgate rules prescribing, in the case of S corporations, partnerships, trusts or estates, a method of attributing the credit under this section to the shareholders, partners or beneficiaries in proportion to their share of the income from the S corporation, partnership, trust or estate.

History.

I.C., § 63-3029I, as added by 2001, ch. 386, § 8, p. 1348; am. 2002, ch. 35, § 9, p. 66; am.

2003, ch. 89, § 1, p. 270; am. 2004, ch. 345, § 2, p. 1025; am. 2005, ch. 23, § 4, p. 61; am. 2012, ch. 14, § 3, p. 25.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 14, substituted "section 47 U.S.C. 153 of the communications act of 1934" for "section 3(44) of the communications act of 1934" in paragraph (3)(b)(i).

Effective Dates.

Section 5 of S.L. 2012, ch. 14 declared an emergency and made this section retroactive to January 1, 2012. Approved February 14, 2012.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state taxes on revenues and income

from communications satellite services. 51 A.L.R.6th 257.

63-3029EE. Special credit available — New employees. [Null and void, effective January 1, 2017.] — (1) Any taxpayer shall be allowed a credit, in an amount determined under subsection (2) of this section, against the tax imposed by this chapter, other than the tax imposed by section 63-3082, Idaho Code, for any taxable year during which the taxpayer's employment of new employees prior to April 14, 2011, as defined under section 63-3029E(1), Idaho Code, increases above the taxpayer's average employment for either: (a) the prior taxable year, or (b) the average of three (3) prior taxable years, whichever is higher. No credit shall be allowed under this section unless the number of new employees equals or exceeds one (1) person.

(2)(a) The credit authorized in subsection (1) of this section shall be:

(i) Five hundred dollars (\$500) per new employee described in subsection (2)(d) of this section; or

(ii) One thousand dollars (\$1,000) per new employee described in subsection (2)(c) of this section, but not both.

(b) The total credit allowed by this section shall not exceed three and one-quarter percent (3.25%) of net income from the taxpayer's corporate, proprietorship, partnership, small business corporation or limited liability company trade or business in which the employment occurred. Additionally, the total amount of this and all other credits allowed under this chapter except for the credits allowed under section 63-3029, Idaho Code, shall not exceed fifty percent (50%) of the tax liability of the taxpayer. The tax liability of the taxpayer shall be the tax after deducting the credit allowed by section 63-3029, Idaho Code.

(c) The one thousand dollar (\$1,000) credit shall apply to an employee who, in the calendar year ending during the taxable year for which the credit is claimed, received annual earnings at an average rate of fifteen dollars and fifty cents (\$15.50) or more per hour worked and who, during such calendar year, was eligible to receive employer provided coverage under an accident or health plan described in section 105 of the Internal Revenue Code.

(d) The five hundred dollar (\$500) credit shall apply to an employee not described in subsection (2)(c) of this section and who is employed in a revenue-producing enterprise as defined in section 63-3029E, Idaho Code.

(3) If the sum of the credit carryovers from the credit allowed by subsection (2) of this section and the amount of credit for the taxable year from the credit allowed by subsection (2) of this section exceed the limitation imposed by subsection (2) of this section for the current taxable year, the excess attributable to the current taxable year's credit shall be a credit carryover to the three (3) succeeding taxable years. The entire amount of unused credit shall be carried forward to the earliest of the succeeding years, wherein the oldest available unused credit shall be used first, so long as the employment level for which the credit was granted is still maintained.

History.

I.C., § 63-3029EE, as added by 2012, ch. 233, § 2, p. 649.

STATUTORY NOTES

Repealed effective January 1, 2017. Section 3 of S.L. 2012, ch. 233 provided that the act "shall be null, void and of no force and effect on and after January 1, 2017."

emergency and provided "this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2011."

Effective Dates.

Section 3 of S.L. 2012, ch. 233 declared an

63-3033. Extension of time. — (a) Taxpayers shall have an automatic extension of time for filing any return, declaration, statement or other document required by this chapter for a period of six (6) months if on or before the unextended due date the taxpayer has paid at least eighty percent (80%) of the total tax due on the income tax return when it is filed, or the total tax due on the income tax return for the prior year if a return was filed for the prior year.

(b) If, on the unextended due date, the payment required to meet the provisions of subsection (a) of this section, after consideration of any previous credits or payments applicable to the return, is fifty dollars (\$50.00) or less, such payment shall not be required in order to qualify for the extension. However, interest shall accrue as provided in subsection (g) of this section. Payment of any balance of tax is due on the earlier of the extended due date or the date the return is filed.

(c) Taxpayers residing outside any of the United States and Puerto Rico (including persons in military or naval service) shall have an automatic extension of time within which to file income tax returns with this state for a period which shall expire on the fifteenth day of the sixth month following the close of their taxable year.

(d) Individuals who are entitled to extensions for filing federal income tax returns as a result of the application of the provisions of sections 911 and 7508 of the Internal Revenue Code, shall be entitled to extensions of time for the same period for filing income tax returns with the state of Idaho subject to the requirements imposed in implementation of the indicated sections.

(e) Any taxpayer entitled to an extension under subsection (c) or (d) of this section shall attach a statement to his return claiming his right to the extension.

(f) If the amount of payment made under subsection (a) of this section is less than eighty percent (80%) of the total tax due under the provisions of this chapter and is less than the amount of the total tax due on the income tax return for the prior year, except as permitted by subsection (b) of this section, a penalty may be applied to the total of the balance due unless reasonable cause can be established. The penalty shall be:

(1) If the taxes for the taxable year are paid on or before the extended due date, two percent (2%) per month from the original due date to the date of payment.

(2) If the taxes for the taxable year are not paid on or before the extended due date, the penalty provided in section 63-3046(c), Idaho Code, from the original due date.

(g) In all cases of an extension of time in which to file any return, except for those related to section 7508 of the Internal Revenue Code, interest shall

be paid on any tax due from the original due date to date of payment at the rate provided in section 63-3045, Idaho Code. For an individual entitled to an extension of time allowed by subsection (d) of this section and section 7508 of the Internal Revenue Code, interest shall be paid on any tax due from the extended due date allowed in subsection (d) of this section to the date of payment.

History.

1959, ch. 299, § 33, p. 613; am. 1965, ch. 316, § 5, p. 880; am. 1969, ch. 319, § 11, p. 982; am. 1976, ch. 77, § 1, p. 249; am. 1976, ch. 270, § 1, p. 913; am. 1980, ch. 5, § 1, p. 10; am. 1981, ch. 290, § 3, p. 597; am. 1992, ch.

49, § 2, p. 151; am. 1993, ch. 3, § 5, p. 5; am. 1997, ch. 57, § 10, p. 95; am. 1998, ch. 54, § 1, p. 207; am. 1999, ch. 34, § 1, p. 71; am. 2001, ch. 53, § 1, p. 95; am. 2005, ch. 23, § 5, p. 61; am. 2006, ch. 56, § 1, p. 166; am. 2011, ch. 45, § 1, p. 102; am. 2014, ch. 9, § 3, p. 9.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 45, rewrote subsection (g), which formerly read: "In all cases of an extension of time in which to file any return, interest shall be paid on any tax due from the original due date to date of payment at the rate provided in section 63-3045, Idaho Code."

The 2014 amendment, by ch. 9, updated a reference in the second sentence of subsection (b).

enue Code are compiled as 26 U.S.C. §§ 911 and 7508.

Effective Dates.

Section 3 of S.L. 2011, ch. 45 declared an emergency retroactively to January 1, 2011. Approved March 9, 2011.

Section 4 of S.L. 2014, ch. 9 declared an emergency and made this section retroactive to January 1, 2014.

Federal References.

Sections 911 and 7508 of the Internal Rev-

63-3035. State withholding tax on percentage basis — Withholding, collection and payment of tax. — (a) Every employer who is required under the provisions of the Internal Revenue Code to withhold, collect and pay income tax on wages or salaries paid by such employer to any employee (other than employees specified in Internal Revenue Code section 3401(a)(2)) shall, at the time of such payment of wages, salary, bonus or other emolument to such employee, deduct and retain therefrom an amount substantially equivalent to the tax reasonably calculated by the state tax commission to be due from the employee under this chapter. The state tax commission shall prepare tables showing amounts to be withheld, and shall supply same to each employer subject to this section. In the event that an employer can demonstrate administrative inconvenience in complying with the exact requirements set forth in these tables, he may, with the consent of the state tax commission and upon application to it, use a different method which will produce substantially the same amount of taxes withheld. Every employer making payments of wages or salaries earned in Idaho, regardless of the place where such payment is made:

- (1) Shall be liable to the state of Idaho for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from his wages and paid over in compliance or intended compliance with this section;
- (2) Must pay to the state tax commission monthly on or before the 20th day of the succeeding month, or at such other times as the state tax

commission may allow, an amount of tax which, under the provisions of this chapter, he is required to deduct and withhold;

(3) Shall register with the state tax commission, in the manner prescribed by it, to establish an employer's withholding account number. The account number will be used to report all amounts withheld, for the annual reconciliation required in this section, and for such other purposes relating to withholding as the state tax commission may require; and

(4) Must, notwithstanding the provisions of paragraphs (1) and (2) of this subsection, if the amount of withholding of such employer for the preceding twelve (12) month period equals or exceeds two hundred forty thousand dollars (\$240,000) per annum or an average of twenty thousand dollars (\$20,000) per month per annum, pay to the state tax commission on the basis of two (2) withholding periods. The first of which shall begin on the first day of the month and end on the fifteenth day of the same month and payment shall be made not later than the twentieth day of the same month. The second period shall begin on the sixteenth day of the same month and end on the last day of the same month, and payment shall be made not later than the fifth day of the following month.

(5) If a payment required pursuant to subsection (a)(2) or (a)(4) of this section is not made or is made delinquent or if made is not equal to the withholding required under this section the state tax commission may treat the failure as a failure to file a return and may take administrative and judicial actions as authorized by this chapter in the case of a failure to file a return. Interest, at the rate provided by section 63-3045, Idaho Code, shall apply to any such underpayment.

(6) Commencing in 2006, the state tax commission shall determine whether the threshold amounts established by subsection (a)(4) of this section must be adjusted to reflect fluctuations in the cost of living. The commission shall base its determination on the cumulative effect of the annual cost-of-living percentage modifications determined by the United States secretary of health and human services pursuant to 42 USC 415(i). When the cumulative percentage applied to the monthly threshold amount equals or exceeds five thousand dollars (\$5,000), the commission shall promulgate a rule adjusting the monthly threshold amount by five thousand dollars (\$5,000) and making the necessary proportional adjustment to the annual threshold amount. The rule shall be effective for the next succeeding calendar year and each year thereafter until again adjusted by the commission. The tax commission shall determine subsequent adjustments in the same manner, in each case using the year of the last adjustment as the base year.

(b)(1) In addition to the payments required pursuant to subsections (a)(2) and (a)(4) of this section, every employer shall file a return upon such form as shall be prescribed by the state tax commission, but not more frequently than annually, or as required pursuant to any agreement between the state tax commission and the department of labor under section 63-3035B, Idaho Code, unless a shorter filing period and due date is prescribed by the state tax commission. The return shall be due on the last day of the second month following the end of the period to which the return relates. The return shall:

- (i) Show, for the period to which it relates, the total amount of wages, salary, bonus or other emolument paid to his employees, the amount deducted therefrom in accordance with the provisions of the Internal Revenue Code, the amount deducted therefrom in accordance with the provisions of this section, the amount of any previous payments made pursuant to this section, the amount of any deficiency due from the employer or refund payable by the state tax commission and such pertinent and necessary information as the state tax commission may require.
- (ii) Include a copy of the declaration of withholding provided to employees pursuant to subsection (b)(2) of this section.
- (2) Every employer making a declaration of withholding as provided herein shall furnish to the employees annually, but not later than thirty (30) days after the end of the calendar year, a record of the amount of tax withheld from such employee on forms to be prescribed, prepared and furnished by the state tax commission.
- (3) Every employer who is required, under Internal Revenue Code section 6011, to file returns on magnetic media, machine readable form or electronic means, as defined in the Idaho uniform electronic transaction act, may be required by rules of the state tax commission to file corresponding state returns on similar magnetic media, machine readable form or electronic means. Such rules may provide a different due date for such returns which shall be no later than the date employers are required to file such returns with the internal revenue service or the social security administration.
- (c) All moneys deducted and withheld by every employer shall immediately upon such deduction be state money and every employer who deducts and retains any amount of money under the provisions of this chapter shall hold the same in trust for the state of Idaho and for the payment thereof to the state tax commission in the manner and at the times in this chapter provided. Any employer who does not possess real property situated within the state of Idaho, which, in the opinion of the state tax commission, is of sufficient value to cover his probable tax liability, may be required to post a surety bond in such sum as the state tax commission shall deem adequate to protect the state.
- (d) The provisions of this chapter relating to additions to tax in case of delinquency, and penalties, shall apply to employers subject to the provisions of this section and for these purposes any amount deducted, or required to be deducted and remitted to the state tax commission under this section, shall be considered to be the tax of the employer and with respect to such amount he shall be considered the taxpayer.
- (e) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for his tax year which begins within such calendar year and the return made by the employer under this subsection (e) shall be accepted by the state tax commission as evidence in favor of the employee of the amount so deducted from his wages. Where the total amount so deducted exceeds the amount of

tax on the employee, based on his Idaho taxable income, or where his income is not taxable under this chapter, the state tax commission shall, after examining the annual return filed by the employee in accordance with this chapter, but not later than sixty (60) days after the filing of each return, refund the amount of the excess deducted.

(f) This section shall in no way relieve any taxpayer from his obligation of filing a return at the time required under this chapter, and, should the amount withheld under the provisions of this section be insufficient to pay the total tax of such taxpayer, such unpaid tax shall be paid at the time prescribed by section 63-3034, Idaho Code.

(g) An employee receiving wages shall on any day be entitled to not more than, but may claim fewer than, the number of withholding exemptions to which he is entitled under the Internal Revenue Code for federal income tax withholding purposes.

(h) An employer shall use the exemption certificate filed by the employee with the employer under the withholding exemption provisions of the Internal Revenue Code in determining the amount of tax to be withheld from the employee's wages or salary under this chapter. The tax commission may redetermine the number of withholding exemptions to which an employee is entitled under subsection (g) of this section, and the state tax commission may require such exemption certificate to be filed on a form prescribed by the commission in any circumstance where the commission finds that the exemption certificate filed for Internal Revenue Code purposes does not properly reflect the number of withholding exemptions to which the employee is entitled under this chapter. In no event shall any employee give an exemption certificate which claims a higher number of withholding exemptions than the number to which the employee is entitled by subsection (g) of this section.

History.

1959, ch. 299, § 35, p. 613; am. 1963, ch. 352, § 1, p. 1013; am. 1965, ch. 316, § 7, p. 880; am. 1967, ch. 294, § 6, p. 828; am. 1969, ch. 319, § 12, p. 982; am. 1971, ch. 38, § 1, p. 84; am. 1982, ch. 219, § 1, p. 594; am. 1983, ch. 4, § 13, p. 6; am. 1983, ch. 20, § 2, p. 56; am. 1986, ch. 132, § 1, p. 339; am. 1987, ch. 33, § 1, p. 54; am. 1989, ch. 180, § 1, p. 447;

am. 1990, ch. 34, § 2, p. 49; am. 1993, ch. 5, § 1, p. 16; am. 1994, ch. 40, § 1, p. 66; am. 1995, ch. 83, § 4, p. 238; am. 1995, ch. 111, § 32, p. 347; am. 1998, ch. 230, § 2, p. 782; am. 1999, ch. 41, § 1, p. 80; am. 2001, ch. 56, § 1, p. 100; am. 2003, ch. 296, § 1, p. 802; am. 2004, ch. 103, § 2, p. 363; am. 2006, ch. 195, § 3, p. 599; am. 2008, ch. 9, § 1, p. 10; am. 2013, ch. 9, § 1, p. 17.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 9, in the second sentence in subsection (b)(1), inserted "second"; added the paragraph (b)(1)(i) designation, and therein inserted "the amount of any deficiency due from the employer or refund payable by the state tax commission;" added paragraph (b)(1)(ii); in subsection (b)(2), deleted "and on or before the last day of February every employer shall file a copy thereof with the state tax commission" from the end; and added the subsection (b)(3) designation.

The 2013 amendment, by ch. 9, in paragraph (a)(4), substituted "two (2) withholding periods" for "withholding periods which begin on the 16th day of the month and end on the 15th day of the following month, and payment shall be made not later than five (5) days after the end of the withholding period" at the end of the first sentence and added the last two sentences.

Federal References.

Section 3401 of the Internal Revenue Code, referred to in subsection (a), and § 6011,

referred to in subdivision (b)(3), are compiled as 26 U.S.C.S. §§ 3401 and 6011.

Effective Dates.

Section 2 of S.L. 2008, ch. 9 provided that the act should take effect on and after January 1, 2009.

Section 2 of S.L. 2013, ch. 9 provided that the act should take effect on and after January 1, 2014, and shall be effective for withholding periods beginning on or after January 1, 2014.

63-3036B. Pass-through entities — Backup withholding. — (1) A pass-through entity, as defined in section 63-3006C, Idaho Code, that is transacting business in Idaho during a taxable year shall withhold tax as prescribed in this section.

(2) For each nonresident individual who has income described in subsection (2) of section 63-3022L, Idaho Code, the pass-through entity shall withhold tax on the individual's share of income from the pass-through entity required to be included in Idaho taxable income of the individual, at the highest marginal rate applicable for the taxable year under section 63-3024, Idaho Code.

(3) A pass-through entity is not required to withhold taxes under this section:

(a) In regard to an individual who is a resident of Idaho as defined in section 63-3013, Idaho Code; or

(b) If the pass-through entity is a publicly traded partnership, as defined in section 7704(b) of the Internal Revenue Code, that is treated as a partnership for purposes of the Internal Revenue Code and that has agreed to file an annual information return reporting the name, address, taxpayer identification number and other information requested by the state tax commission concerning each unitholder whose distributive share of partnership income from Idaho sources is more than five hundred dollars (\$500); or

(c) If withholding is not required pursuant to a rule adopted under this section; or

(d) In regard to an individual who is not a resident of Idaho as defined in section 63-3013, Idaho Code, but for whom the pass-through entity has reported and paid the tax relating to said individual on a composite return pursuant to section 63-3022L, Idaho Code. An entity may rely upon information provided by the individual indicating state of residency as prescribed in the rules of the state tax commission.

(4) A pass-through entity that is required to withhold tax under this section shall file a withholding return with the state tax commission setting forth the amount of income described in subsection (2) of section 63-3022L, Idaho Code, the amount of tax withheld under this section and any other information required by the state tax commission. The return shall be filed with the state tax commission on the form and taxes withheld under this section shall be paid to the state tax commission in the time and manner prescribed by rules of the state tax commission. To the extent the state tax commission finds practicable, the rules shall generally conform to the requirements of section 63-3035, Idaho Code.

(5) A pass-through entity that is required to withhold tax under the provisions of this section shall furnish a statement to each individual on

whose behalf tax is withheld. The statement shall state the amount of tax withheld on behalf of the individual for the taxable year of the pass-through entity. The statement shall be made on a form prescribed by the state tax commission and shall contain any other information required by it.

(6) A pass-through entity is liable to this state for amounts of tax required to be withheld and paid under the provisions of this section. A pass-through entity is not liable to an officer, director, or individual owner of an interest in the pass-through entity for amounts required to be withheld under the provisions of this section that were paid to the state tax commission as prescribed in this section. Amounts required to be withheld and paid over to the state tax commission under this section that are not withheld or paid over at the time and in the manner required by the provisions of this section shall be a deficiency in tax as defined in section 63-3044, Idaho Code.

(7) For purposes of this section, "individual" shall have the same meaning as in subsection (6) of section 63-3022L, Idaho Code.

History.

I.C., § 63-3036B, as added by 2010, ch. 37, § 3, p. 67; am. 2011, ch. 3, § 3, p. 6; am. 2012,

ch. 187, § 2, p. 491; am. 2014, ch. 36, § 2, p. 61.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 3, substituted "the individual's share of income from the pass-through entity required to be included in Idaho taxable income of the individual" for "any actual distributions of funds from income described in subsection (2) of section 63-3022L, Idaho Code" in subsection (2); added paragraph (3)(c) and redesignated former paragraph (3)(c) as paragraph (3)(d); and substituted "state tax commission" for "commission" throughout subsections (4) to (6).

The 2012 amendment, by ch. 187, in subsection (2), inserted "nonresident" and substituted "who has income described in subsection (2)" for "for whom withholding is required under subsection (4)"; in subsection (3), deleted former paragraph (b) which read, "In regard to an individual who makes a timely election under section 63-3022L, Idaho Code, to have the individual's tax reported and paid on the pass-through entity's return", redesignated former paragraphs (c) and (d) as pres-

ent paragraphs (b) and (c), and added present paragraph (d).

The 2014 amendment, by ch. 36, added subsection (7).

Federal References.

Section 7704 of the Internal Revenue Code, referred to in paragraph (3)(c), is codified as 26 USCS § 7704.

Effective Dates.

Section 4 of S.L. 2010, ch. 37 provided that the act should take effect on and after January 1, 2011.

Section 4 of S.L. 2011, ch. 3 declared an emergency retroactively to January 1, 2011. Approved February 15, 2011.

Section 4 of S.L. 2012, ch. 187 declared an emergency and made this section retroactive to January 1, 2012. Approved March 29, 2012.

Section 4 of S.L. 2014, ch. 36 declared an emergency and made this section retroactive to January 1, 2014.

63-3037. Information returns. — (a) All persons, in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries and employers, making payment to another person of interest, rent, salaries, wages, except as provided by subsection (b) of section 63-3035, Idaho Code, and section 63-3036, Idaho Code, premiums, annuities, compensation, remunerations, emoluments, payments to subcontractors, other fixed or determinable gains, profits and income, or corporate liquidation distributions shall make returns to the state tax commission setting forth the amount of such gains, profits and income, and the name and address of

the recipient of such payment. Such returns shall correspond to the requirements of the Internal Revenue Code, but shall be filed with the state tax commission on or before the last day of February of the year following the year to which the return relates.

(b) The state tax commission may, by rule:

(1) Excuse the filing of any returns required by subsection (a) of this section when it finds that the returns required of any class or group of persons do not contribute to the efficient administration of the taxes imposed by this chapter.

(2) When necessary for the efficient administration of this section, set a different due date for the returns required by this section, provided however, such date shall not be earlier than the date required by the Internal Revenue Code for filing equivalent federal returns in a nonelectronic format.

(c) The commission may prescribe rules providing standards consistent with section 63-115, Idaho Code, for determining which returns must be transmitted electronically. The commission may not require any person to transmit returns electronically unless such person is required to report on the return at least two hundred fifty (250) annual information returns. In promulgating such rules, the commission shall take into account, among other relevant factors, the ability of the taxpayer to comply, at a reasonable cost, with the requirements of such rules.

History.

1959, ch. 299, § 37, p. 613; am. 1961, ch. 328, § 16, p. 622; am. 1972, ch. 287, § 1, p.

723; am. 1990, ch. 77, § 1, p. 160; am. 2009, ch. 3, § 2, p. 5; am. 2010, ch. 10, § 1, p. 11.

STATUTORY NOTES

Cross References.

State tax commission, § 63-101.

Amendments.

The 2009 amendment, by ch. 3, added subsection (c).

The 2010 amendment, by ch. 10, at the end of subsection (a), added "but shall be filed

with the state tax commission on or before the last day of February of the year following the year to which the return relates"; in subsection (b), substituted "rule" for "regulation" in the introductory paragraph, added the paragraph (1) designation and added paragraph (2).

63-3045. Notice of redetermination or deficiency — Interest. —

(1)(a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by first class mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.

(b) If the taxpayer files a protest with the state tax commission within the

period set forth in subsection (1)(a) of this section, and such protest does not comply with the rules of the state tax commission and is therefore inadequate to perfect the taxpayer's right to a redetermination of the deficiency determination, then, the state tax commission shall notify the taxpayer, in the same manner as set forth in subsection (1)(a) of this section, of such inadequacies, setting forth in said notice the corrective action to be taken by the taxpayer to perfect his protest. The taxpayer shall thereafter have twenty-eight (28) days from the date of said notice to perfect his protest.

(c) No assessment of a deficiency in respect to the tax imposed by this chapter, and no distraint or proceedings in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until all appeal rights relating to the deficiency have become final.

(2) Following a protest, the taxpayer has the right to a hearing. The purpose of the hearing is to discuss the deficiency determination and the taxpayer's protest with a commissioner or duly authorized representative of the commission. The meeting shall be held informally and evidence shall be freely admitted regardless of the rules of evidence.

(3) Any hearing conducted under the provisions of this section may be conducted, in whole or in part, by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

(4) A taxpayer has the right to be represented by, or be accompanied by, any person of his choice in any proceeding before the tax commission. If the taxpayer is not present at a proceeding, the representative of that taxpayer must be designated in writing by the taxpayer as shall be prescribed in administrative rules or in any manner acceptable to the tax commission.

(5) If the taxpayer does not file a protest with the state tax commission within the time prescribed in subsection (1)(a) of this section, the deficiency shall be assessed and shall become due and payable upon notice and demand from the state tax commission.

(6)(a) Interest shall apply to deficiencies in tax and refunds of tax. Interest shall not apply to any penalty or to unpaid accrued interest. Interest relating to deficiencies or refunds accruing after the original due date of the return, but not including extensions of the due date, shall be computed on the net of any underpayments and overpayments of a tax liability required to be shown as due on the same return.

(b) Interest upon any deficiency shall be assessed at the same time as the deficiency, shall be due and payable upon notice and demand from the state tax commission and shall be collected as a part of the tax at the rate per annum determined under the provisions of subsection (6)(c) of this section from the date prescribed for the payment of the tax. In the event any of the deficiency is reduced by reason of a carryback of a net operating loss or a capital loss carryback, such reduction in deficiency shall not affect the computation of interest under this subsection for the period ending with the last day of the taxable year in which the net operating loss or capital loss arises.

(c) The rate of interest accruing during any calendar year, or portion thereof, upon any deficiency, or payable upon an overpayment or refund shall be two percent (2%) plus the rate determined under section 1274(d), Internal Revenue Code, by the secretary of the treasury of the United States as the midterm federal rate as it applies on September 15 of the immediately preceding calendar year rounded to the nearest whole number.

(7) When the time provisions contained in this section conflict with the provisions of section 63-4208, Idaho Code, relating to the assessment of taxes on illegal possession of controlled substances, the provisions of section 63-4208, Idaho Code, shall prevail.

History.

1959, ch. 299, § 45, p. 613; am. 1965, ch. 316, § 9, p. 880; am. 1969, ch. 319, § 14, p. 982; am. 1971, ch. 302, § 4, p. 1242; am. 1976, ch. 270, § 1 [2], p. 913; am. 1981, ch. 290, § 1, p. 597; am. 1992, ch. 49, § 3, p. 151; am. 1993,

ch. 94, § 3, p. 224; am. 1994, ch. 172, § 2, p. 387; am. 1996, ch. 40, § 5, p. 103; am. 1997, ch. 57, § 12, p. 95; am. 1998, ch. 51, § 2, p. 201; am. 2004, ch. 28, § 2, p. 45; am. 2012, ch. 6, § 1, p. 9.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 6, in subsection (1), substituted "first class mail" for "registered or certified mail" near the end of the first sentence of paragraph (a) and inserted "state" preceding "tax commission" three times in paragraph (b).

that act enacted a new § 63-3045. However, S.L. 2013, ch. 58, § 1 repealed the repeal of this section and the version of this section enacted by S.L. 2012, ch. 6, § 4, leaving this section as amended by S.L. 2012, ch. 6, § 1.

Compiler's Notes.

Section 3 of S.L. 2012, ch. 6 repealed this section, effective July 1, 2013 and section 4 of

Effective Dates.

Section 6 of S.L. 2012, ch. 6 provided that this section shall be in full force and effect on and after July 1, 2012.

63-3047. Compromised cases. — The state tax commission or its delegate may compromise any taxes, penalties or interest arising under the provisions of this chapter instead of commencing suit thereon and may settle any such case with the consent of the attorney general after suit thereon has been commenced.

History.

1959, ch. 299, § 47, p. 613; am. 2009, ch. 120, § 2, p. 384.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 120, substituted "any taxes, penalties or interest" for "any penalty," "this chapter" for "this act," and "may settle" for "may compromise" and de-

leted the last sentence, which read: "Where any penalty case is compromised the state tax commission shall keep on file in its office reasons for the settlement of any case by compromise."

JUDICIAL DECISIONS

Equitable Relief.

Section 63-3002 does not explicitly state that the state should adopt federal provisions

for equitable relief from tax liability and has been read as not requiring adoption of every federal tax procedure. The supreme court has

declined to adopt federal procedures when those procedures conflicted with prescriptions in Idaho law. This section and § 63-3048 provide a mechanism by which the Idaho

state tax commission may grant equitable relief. *Parker v. Idaho State Tax Comm'n*, 148 Idaho 842, 230 P.3d 734 (2010).

63-3048. Adjusted or compromised cases — Settlement and closing agreements. — (a) The state tax commission or its delegate is authorized to enter into an agreement in writing with any person relating to the liability of such person, or of the person for whom he is acting, in respect of any tax under this chapter for any taxable period ending prior to the date of the agreement.

(b) Where the amount in issue relating to the tax liability of any taxpayer is equal to or exceeds fifty thousand dollars (\$50,000) and the commission has delegated the authority to enter into a settlement or closing agreement for such liability to an individual commissioner, the following minimum standards of procedure shall apply:

(1) In addition to the individual commissioner delegated the principal responsibility to negotiate on behalf of the commission, a second commissioner shall be present for a final review of the negotiated settlement or closing agreement. Both commissioners shall be required to sign the settlement or closing agreement to make it binding and complete.

(2) In addition to the two (2) commissioners present at the final review, a representative of the office of the attorney general shall be present as well as tax commission staff, which shall include a tax policy specialist and either a representative from the audit division or other division where the case originated.

(3) The tax policy specialist or deputy attorney general assigned to a settlement or closing agreement shall prepare and submit to the commission a written summary for the final review explaining the terms of the settlement or closing agreement. The summary shall include any recommendations of agency staff including audit staff.

(4) The tax commission shall retain a copy of all settlement and closing agreements and, in addition, all summaries prepared pursuant to subsection (b)(3) of this section.

(c) The tax commission shall submit an annual report to the governor and the legislature by March 1 of each year summarizing all settlement and closing agreements entered into during the previous calendar year as defined by subsection (b) of this section.

(d) The tax commission shall promulgate administrative rules in compliance with chapter 52, title 67, Idaho Code, to implement the provisions of this section.

(e) Such agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of the state.

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

History.

1959, ch. 299, § 48, p. 613; am. 2009, ch. 120, § 3, p. 384.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 120, in the section catchline, inserted "settlement and"; in subsection (a), substituted "this chapter"

for "this act"; and added subsections (b) through (d), redesignating former subsection (b) as subsection (e).

JUDICIAL DECISIONS**Equitable Relief.**

Section 63-3002 does not explicitly state that the state should adopt federal provisions for equitable relief from tax liability and has been read as not requiring adoption of every federal tax procedure. The supreme court has declined to adopt federal procedures when

those procedures conflicted with prescriptions in Idaho law. This section and § 63-3047 provide a mechanism by which the Idaho state tax commission may grant equitable relief. *Parker v. Idaho State Tax Comm'n*, 148 Idaho 842, 230 P.3d 734 (2010).

63-3049. Judicial review.**JUDICIAL DECISIONS****ANALYSIS**

Appeal to district court.

Appeal to supreme court.

Attorneys fees.

Costs and fees.

Appeal to District Court.

A taxpayer's appeal of a decision by the tax commission to the district court proceeds as a de novo bench trial in the district court. *Gracie, LLC v. Idaho State Tax Comm'n*, 149 Idaho 570, 237 P.3d 1196 (2010).

Appeal to Supreme Court.

When a taxpayer appeals a decision to the district court and then to the supreme court, the supreme court reviews the district court's decision directly and utilizes the tax commission's administrative determination as merely an articulation of the position of the tax commission as a party to the action. *Gracie, LLC v. Idaho State Tax Comm'n*, 149 Idaho 570, 237 P.3d 1196 (2010).

Attorneys Fees.

Idaho state tax commission was awarded attorney fees on appeal because the appellants/taxpayers failed to address the due pro-

cess issue and urged the supreme court to consider an issue raised for the first time on appeal; the taxpayers urged a violation of the commerce clause without showing how it applied to the case. *Parker v. Idaho State Tax Comm'n*, 148 Idaho 842, 230 P.3d 734 (2010).

Costs and Fees.

Idaho state tax commission and the Idaho board of tax appeals were entitled to fees on appeal under subsection (d) in a taxpayer's challenge of two commission notice of deficiency determinations, where the taxpayer's position was groundless. The taxpayer's theory of legislative immunity was based on an untenable reading of Idaho Const. art. III, § 7. *Hart v. Idaho State Tax Comm'n*, 154 Idaho 621, 301 P.3d 627 (2012).

Cited in: *Baird Oil Co., Inc. v. Idaho State Tax Comm'n*, 144 Idaho 229, 159 P.3d 866 (2007).

63-3060A. Continuous execution on individual earnings. —

Where an execution or garnishment against earnings for a state tax liability is served upon any person or upon the state of Idaho, and there is in possession of such person or the state of Idaho any such earnings of the individual debtor, the execution and the garnishment shall operate contin-

uously and shall require such person or the state of Idaho to withhold the nonexempt portion of earnings at each succeeding earnings disbursement interval until released by the state tax commission or until the dollar amount specifically set forth on the record of assessment, identified in section 63-3045A, Idaho Code, and subject to garnishment as of the date the tax warrant is issued, is discharged or satisfied in full. The proportion of earnings subject to garnishment pursuant to this section, as compared to total gross taxable earnings, shall be limited to twenty-five percent (25%), except if the federal government is also garnishing the earnings of such person then the garnishment shall be limited to ten percent (10%). All garnishment or execution against earnings for the payments of any tax owed to the state of Idaho shall be governed by this section. For purposes of this section, earnings are gross taxable earnings from sources identified in section 11-206(1), Idaho Code.

History.

I.C., § 63-3060A, as added by 2013, ch. 244,
§ 1, p. 590.

STATUTORY NOTES**Compiler's Notes.**

S.L. 2013, Chapter 244 became law without
the signature of the governor.

63-3061A. Notice of levy and distraint. — (1) The state tax commission shall, at the time of levy, provide to the taxpayer and to any person in possession of the property subject to distraint, written notice of levy and distraint. The written notice of levy and distraint may be:

- (a) Given in person;
- (b) Left at the dwelling place or usual place of business of such person; or
- (c) Sent by first class mail to such person's last known address.

(2) Service may be made by other means, including electronic means as provided in chapter 50, title 28, Idaho Code, the uniform electronic transactions act, when agreed upon by the state tax commission and the party served.

History.

I.C., § 63-3061A, as added by 2005, ch. 22,
§ 1, p. 60; am. 2012, ch. 6, § 2, p. 9.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 6, substituted "first class mail" for "certified mail" in paragraph (1)(c).

Compiler's Notes.

Section 3 of S.L. 2012, ch. 6 repealed this section, effective July 1, 2013 and section 5 of that act enacted a new § 63-3061A. However,

S.L. 2013, ch. 58, § 1 repealed the repeal of this section and the version of this section enacted by S.L. 2012, ch. 6, § 5, leaving this section as amended by S.L. 2012, ch. 6, § 2.

Effective Dates.

Section 6 of S.L. 2012, ch. 6 provided that this section shall be in full force and effect on and after July 1, 2012.

63-3067. Revenue received — State refund account. — (1) A sum equal to the amount withheld under section 63-3035A, Idaho Code, shall be distributed fifty percent (50%) to the public school income fund to be utilized to facilitate and provide substance abuse programs in the public school system, and fifty percent (50%) shall be distributed to the counties to be utilized for county juvenile probation services. These funds shall be distributed quarterly to the counties based upon the percentage the population of the county bears to the population of the state as a whole.

(2) All moneys except as provided in subsection (1) of this section, and except as hereinafter provided, received by the state of Idaho under this act shall be deposited by the state tax commission, as received by it, with the state treasurer and shall be placed in and become a part of the general account under the custody of the state treasurer. Providing however, that an amount equal to twenty percent (20%) of the amount deposited with the state treasurer shall be placed in the "state refund account" which is hereby created for the purpose of repaying overpayments and for the purpose of paying any other erroneous receipts illegally assessed or collected, penalties collected without authority and taxes and licenses unjustly assessed, collected or which are excessive in amount. Whenever necessary for the purpose of making prompt payment of refunds, the board of examiners, upon request from the state tax commission, and after review, may authorize the state tax commission to transfer any additional specific amount from income tax collections to the "state refund account." There is appropriated out of the state refund account so much thereof as may be necessary for the payment of the refunds herein provided. Claims for, and payment of refunds under the provisions of this section shall be made in the same manner as other claims against the state of Idaho.

(3) Any unencumbered balance remaining in the state refund account on June 30 of each and every year in excess of the sum of one million five hundred thousand dollars (\$1,500,000) shall be transferred to the general fund and the state controller is hereby authorized and directed on such dates to make such transfers unless the board of examiners, which is hereby authorized to do so, changes the date of transfer or sum to be transferred.

History.

1959, ch. 299, § 67, p. 613; am. 1965, ch. 316, § 11, p. 880; am. 1966 (2nd E.S.), ch. 7, § 1, p. 19; am. 1974, ch. 122, § 1, p. 1297; am. 1981, ch. 38, § 1, p. 58; am. 1981, ch. 97, § 1, p. 139; am. 1983, ch. 156, § 1, p. 433; am. 1985, ch. 31, § 3, p. 59; am. 1986, ch. 73, § 13, p. 201; am. 1987, ch. 6, § 1, p. 6; am. 1987, ch.

260, § 5, p. 545; am. 1987, ch. 337, § 1, p. 709; am. 1994, ch. 180, § 156, p. 420; am. 1998, ch. 62, § 1, p. 219; am. 1999, ch. 371, § 1, p. 1015; am. 2001, ch. 356, § 2, p. 1250; am. 2002, ch. 151, § 1, p. 441; am. 2004, ch. 104, § 1, p. 369; am. 2005, ch. 369, § 2, p. 1169; am. 2008, ch. 390, § 2, p. 1072; am. 2012, ch. 14, § 4, p. 25.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 390, deleted the subsection (2)(a) designation and deleted subsection (2)(b), which read: "an amount equal to any amount required to be rebated under section 63-2909, Idaho Code, is contin-

uously appropriated for the purpose of paying any such rebate."

The 2012 amendment, by ch. 14, deleted "for the purpose of remitting to counties and taxing districts for personal property exempt from taxation pursuant to section 63-602EE,

Idaho Code, as provided in subsection (3) of this section, for the purpose of depositing in the trust accounts specified in section 63-3067A, Idaho Code, such amounts as may be designated by individuals for the purpose of depositing in the Idaho ag in the classroom account an amount as may be designated by the individual receiving a refund for such overpayment" following "repaying overpay-

ments" near the middle of the second sentence of subsection (2).

Effective Dates.

Section 5 of S.L. 2012, ch. 14 declared an emergency and made this section retroactive to January 1, 2012. Approved February 14, 2012.

63-3067A. Designation by individuals — Trust accounts. —

(1) Every individual who:

(a) Has a refund due and payable for overpayment of taxes under this act may designate all or any portion thereof to be deposited in a trust account specified in subsection (3) of this section; or

(b) Has an income tax liability may, in addition to his tax obligation, include a donation to be deposited in a trust account specified in subsection (3) of this section.

(2) A designation under subsection (1) of this section may be made in any taxable year in such manner and form as prescribed by the state tax commission. The manner and form so prescribed shall be a conspicuous portion of the principal form provided for the purpose of individual taxation.

(3) The trust accounts authorized to receive moneys designated under subsection (1) of this section are:

(a) The fish and game set-aside account created by section 36-111, Idaho Code;

(b) The Idaho ag in the classroom account created by section 57-815, Idaho Code;

(c) The drug and driving while under the influence enforcement donation fund created by section 57-816, Idaho Code;

(d) The children's trust fund created by section 39-6007, Idaho Code;

(e) The special olympics Idaho fund created in section 57-823, Idaho Code;

(f) The Idaho guard and reserve family support fund created by section 57-820, Idaho Code;

(g) The American red cross of greater Idaho fund created in section 57-821, Idaho Code;

(h) The Idaho food bank fund created by section 57-824, Idaho Code; and

(i) The veterans support fund created in section 65-209, Idaho Code.

(4) Prior to the distribution of funds into any of the trust accounts specified in subsection (3) of this section from the refund account, the state tax commission shall retain funds for the commission's costs for collecting and administering the moneys in the accounts as follows: three thousand dollars (\$3,000) from each account for start-up costs during the first year of collections, and three thousand dollars (\$3,000) or twenty percent (20%) of the moneys remitted to each account during the fiscal year, whichever is less, from each account during each fiscal year thereafter, which amounts are hereby appropriated to the tax commission.

History.

I.C., § 63-3067A, as added by 1987, ch. 337,

§ 3, p. 709; am. 1989, ch. 127, § 1, p. 277; am. 1990, ch. 388, § 12, p. 1067; am. 2002, ch.

292, § 9, p. 841; am. 2005, ch. 104, § 1, p. 676; am. 2009, ch. 63, § 1, p. 173; am. 2009, 328; am. 2006, ch. 88, § 1, p. 258; am. 2007, ch. 108, § 9, p. 344; am. 2014, ch. 17, § 1, p. ch. 10, § 3, p. 10; am. 2008, ch. 218, § 3, p. 24.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 218, redesignated former alphabetical subsection designations numerically and made related redesignations; and rewrote subsection (3)(e), which formerly read: "The United States olympic account created by section 57-817, Idaho Code, but no donation shall exceed five dollars (\$5.00)."

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 63, added subsection (3)(h).

The 2009 amendment, by ch. 108, in subsection (3)(c), substituted "drug and driving while under the influence enforcement donation fund" for "drug enforcement donation account."

The 2014 amendment, by ch. 17, add paragraph (3)(i).

Compiler's Notes.

The term "this act" in paragraph (1)(a) refers to S.L. 1987, ch. 337, which is compiled as §§ 39-6007, 57-816, 57-817, 63-3067, and 63-3067A.

63-3067B. Designation by individuals — Trust accounts. —

(1) Every resident individual who:

(a) Has a refund due and payable for overpayment of taxes under this act may designate all or any portion thereof to be deposited in a trust account specified in subsection (3) below; or

(b) Has an income tax liability may, in addition to his tax obligation, include a donation to be deposited in a trust account specified in subsection (3) of this section.

(2) A designation under subsection (1) of this section may be made in any taxable year in such manner and form as prescribed by the state tax commission. The manner and form so prescribed shall be a conspicuous portion of the principal form provided for the purpose of individual taxation.

(3) The trust accounts authorized to receive moneys designated under subsection (1) of this section are:

(a) The fish and game set-aside account created in section 36-111, Idaho Code;

(b) The Idaho ag in the classroom account created in section 57-815, Idaho Code;

(c) The drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code;

(d) The children's trust fund created in section 39-6007, Idaho Code;

(e) The special olympics Idaho fund created in section 57-823, Idaho Code;

(f) The Alzheimer's disease services account created in section 57-819, Idaho Code;

(g) The community forestry trust account created in section 38-136, Idaho Code;

(h) The American red cross of greater Idaho fund created in section 57-821, Idaho Code, which donation shall be ten dollars (\$10.00) if made;

(i) The veterans support fund created in section 65-209, Idaho Code; and

(j) The Idaho food bank fund created in section 57-824, Idaho Code.

(4) Prior to the distribution of funds into any of the trust accounts

specified in subsection (3) of this section from the refund account, the state tax commission shall retain funds for the commission's costs for collecting and administering the moneys in the accounts as follows: three thousand dollars (\$3,000) from each account for start-up costs during the first year of collections, and three thousand dollars (\$3,000) or twenty percent (20%) of the moneys remitted to each account during the fiscal year, whichever is less, from each account during each fiscal year thereafter, which amounts are hereby appropriated to the tax commission.

History.

I.C., § 63-3067B, as added by 1991, ch. 183, § 1, p. 447; am. 1992, ch. 258, § 4, p. 749; am. 2002, ch. 292, § 10, p. 841; am. 2006, ch. 88,

§ 2, p. 258; am. 2008, ch. 17, § 1, p. 23; am. 2008, ch. 218, § 4, p. 677; am. 2009, ch. 63, § 2, p. 173; am. 2009, ch. 108, § 10, p. 344.

STATUTORY NOTES**Amendments.**

This section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 17, changed the designation scheme in this section and added subsection (3)(i).

The 2008 amendment, by ch. 218, redesignated former alphabetical subsection designations numerically and made related redesignations; and rewrote subsection (3)(e), which formerly read: "The United States olympic account created by section 57-817, Idaho Code, but no donation shall exceed five dollars (\$5.00)."

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 63, added subsection (3)(j).

The 2009 amendment, by ch. 108, in subsection (3)(c), substituted "drug and driving while under the influence enforcement donation fund" for "drug enforcement donation account."

Compiler's Notes.

The term "this act" in paragraph (1)(a) refers to S.L. 1991, Chapter 183, which is codified as § 57-819 and this section.

63-3067D. Designation by taxpayer — Opportunity scholarship.

— (1) Every taxpayer who has a refund due and payable for overpayment of taxes under the provisions of this chapter may designate any portion of such refund to be remitted to the state board of education or the board of regents of the university of Idaho for the purpose of awarding opportunity scholarships pursuant to chapter 56, title 33, Idaho Code. Every taxpayer who has an income tax liability may, in addition to his tax obligation, include a donation of any amount to be remitted to the state board of education for the purpose of awarding opportunity scholarships pursuant to chapter 56, title 33, Idaho Code. Such moneys shall be deposited into the opportunity scholarship program account pursuant to section 33-5608, Idaho Code.

(2) A designation under subsection (1) of this section may be made in any taxable year in such manner and form as prescribed by the state tax commission. The manner and form so prescribed shall be a conspicuous portion of the principal form provided for the purpose of individual taxation.

(3) Prior to the distribution of funds into the opportunity scholarship program account as provided in subsection (1) of this section from the refund account, the state tax commission shall retain funds for the commission's costs for collecting and administering the moneys in the account as follows: three thousand dollars (\$3,000) from the opportunity scholarship program account for start-up costs during the first year of collections, and three

thousand dollars (\$3,000) or twenty percent (20%) of the moneys remitted to the opportunity scholarship program account pursuant to this section during the fiscal year, whichever is less, from the opportunity scholarship program account during each fiscal year thereafter, which amounts are hereby appropriated to the state tax commission.

History.

I.C., § 63-3067D, as added by 2010, ch. 281,
§ 1, p. 758.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 2010, ch. 281 declared an emergency retroactively to January 1, 2010 and approved April 8, 2010.

63-3068. Period of limitations for issuing a notice of deficiency and collection of tax. — (a) Except as otherwise provided in this section, a notice of deficiency, as provided in section 63-3045, Idaho Code, for the tax imposed in this chapter shall be issued within three (3) years from either the due date of the return, without regard to extensions, or from the date the return was filed, whichever is later.

(b) If an assessment has been made as provided in this chapter, then such tax shall be collected either by levy, or by a proceeding brought in court, within a period of twelve (12) years from the date of entry of the record of assessment required by section 63-3045A, Idaho Code, of the tax and provided, further, that this shall not be in derogation of any of the remedies elsewhere provided in this chapter.

(c) In the case of a fraudulent return or a false return with the intent to evade the tax imposed in this chapter, or a willful attempt in any manner to defeat or evade the tax imposed in this chapter, a notice of deficiency may be issued, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(d) In the case of a failure to file a return, for any reason, a notice of deficiency may be issued, the tax imposed in this chapter may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(e) In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, a notice of deficiency shall be issued, a claim shall be made, the tax shall be assessed or any proceeding in court without assessment for the collection of such tax shall be begun, within twelve (12) months after written request for prompt action is filed with the state tax commission by the executor, administrator, or other fiduciary representing the estate of such decedent. This subsection shall not apply if the return for which the request for prompt action relates has not been filed with the state tax commission.

(f) When Idaho taxable income or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitation for issuing a notice of deficiency shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the state tax commission by the taxpayer, three (3)

years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection the term "final federal determination" shall mean the final resolution of all issues which were adjusted by the internal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period of limitations as provided in subsections (a) and (m) of this section, only those specific items of income, deductions, gains, losses, or credits which were adjusted in the final federal determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(g) If an adjustment, which was made within the period of limitations as provided in this section, affects the amount of tax credit, net operating loss, or capital loss, claimed in a taxable year other than the tax year in which the adjustment is made, then adjustments to the credit, net operating loss, or capital loss claimed in such other tax year may be made and a resulting notice of deficiency may be issued even though such notice of deficiency would otherwise be barred under the provisions of this section.

(h) Notwithstanding any other provisions of this section, when an amended Idaho return is filed within the period of limitations as provided in subsections (a) and (m) of this section, the period of limitations for issuing a notice of deficiency shall be three (3) years from the date the amended return was filed. However, upon the expiration of the period of limitations as provided in subsections (a) and (m) of this section, only those specific items of income, deductions, gains, losses, or credits, which were adjusted in the amended Idaho return shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(i) If a taxpayer has filed an amended federal return, and no corresponding Idaho amended return has been filed with the state tax commission, then the period of limitations for issuing a notice of deficiency shall be reopened and shall not expire until three (3) years from the date of delivery to the tax commission by the taxpayer of the amended federal return. However, upon the expiration of the period of limitations as provided in subsections (a) and (m) of this section, then only those specific items of income, deductions, gains, losses, or credits, which were adjusted in the amended federal return shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(j) Notwithstanding any other provisions of this section, a notice of deficiency, related to items on the return of any pass-through entity, as defined in this section, which other taxpayers are required by law to report, shall be issued to such other taxpayers within the later of three (3) years from the due date of the other taxpayers' return, without regard to extensions, three (3) years from the date the other taxpayers' returns were filed, or three (3) years from the date of filing of the pass-through entity's return. If the pass-through entity files an amended return, notices of

deficiency may be issued to the other taxpayers within three (3) years from the date the amended return for the pass-through entity was filed with the state tax commission. If the pass-through entity files an amended return with the internal revenue service, or the internal revenue service issues a final determination to the pass-through entity, then the period of limitations for issuing a notice of deficiency to the other taxpayers shall be reopened and shall not expire until three (3) years from the date of delivery to the tax commission by the pass-through entity of the amended federal return or the later of one (1) year from the date of delivery to the state tax commission by the pass-through entity of the final federal determination, three (3) years from the due date of the pass-through entity's return, without regard to extensions, or three (3) years from the date the pass-through entity's return was filed.

(k) For purposes of this section, "pass-through entity" means a partnership, S corporation, trust, limited liability company or any other entity whose items of income, deductions, gains, losses and credits must be reported by other taxpayer(s). For further purposes of this section, the term "other taxpayer" shall include, by way of unlimiting example, such taxpayers as partners, shareholders, beneficiaries, joint venturers or investors.

(l) In the case of a duplicate return filed under section 63-217(1)(b), Idaho Code, the limitation under this section shall be the later of one (1) year from the filing of the duplicate return or the date otherwise applicable under this section.

(m) Prior to the expiration of the time prescribed in this section for the issuance of a notice of deficiency for the tax imposed in this chapter, both the state tax commission, its delegate or deputy, and the taxpayer may consent in writing to extend the period of time within which a notice of deficiency may be issued. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. When a pass-through entity extends the period of limitations in accordance with this subsection, the period of limitations for the other taxpayers is automatically extended for the same period for the purpose of issuing a notice of deficiency to the other taxpayers reflecting the adjustments to the pass-through entity's return.

(n) The expiration of the period of limitations as provided in this section shall be suspended for the time period during which the state tax commission is prohibited from issuing a notice of deficiency, making the assessment, or from collecting by levy or a proceeding in court, and for thirty (30) days thereafter.

(o) For the purposes of this section, "return" includes a notice of deficiency determination issued by the state tax commission when no return was filed by the taxpayer. Such a return is deemed filed on the date the taxes determined by the state tax commission are assessed.

History.

I.C., § 63-3068, as added by 1993, ch. 47, § 2, p. 119; am. 1995, ch. 111, § 34, p. 347; am. 1996, ch. 44, § 1, p. 114; am. 1997, ch.

113, § 4, p. 274; am. 2002, ch. 35, § 11, p. 66; am. 2005, ch. 23, § 7, p. 61; am. 2008, ch. 10, § 1, p. 13; am. 2013, ch. 244, § 2, p. 590.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 10, updated the section reference in subsection (b) in light of the 2006 amendment of §§ 63-3044 and 63-3045A.

The 2013 amendment, by ch. 244, substi-

tuted "twelve (12) years" for "six (6) years" near the middle of subsection (b).

Compiler's Notes.

S.L. 2013, Chapter 244 became law without the signature of the governor.

63-3071. Destruction of old returns. — After the expiration of the period of limitations fixed in section 63-3068, Idaho Code, the state tax commission may destroy old returns unless an earlier destruction is authorized in section 63-218, Idaho Code.

History.

1959, ch. 299, § 71, p. 613; am. 2008, ch. 5, § 2, p. 7.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 5, added the proviso at the end.

63-3072. Credits and refunds. — (a) Subject to the provisions of subsections (b), (c) and (h) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) Except in regard to amounts withheld as provided in section 63-3035, 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated payments under section 63-3036A, Idaho Code, or amounts paid as backup withholding under section 63-3036B, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions.

(c) With regard to amounts withheld as provided in section 63-3035, 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated payments under section 63-3036A, Idaho Code, or amounts paid as backup withholding under section 63-3036B, Idaho Code, a claim for credit or refund shall be made within three (3) years from the due date of the return, without regard to extensions, for the taxable year in respect to which the tax was withheld or paid. However, with regard to an individual who is entitled to an extension of time as provided in section 7508 of the Internal Revenue Code, the three (3) year period provided in this subsection for claiming a credit or refund shall be extended by the number of days disregarded under section 7508 of the Internal Revenue Code.

(d) Notwithstanding any other provisions of this section, when Idaho

taxable income and/or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitations for claiming a refund or credit of tax, penalties, or interest shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the taxpayer by the internal revenue service, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection, the term "final federal determination" shall mean the final resolution of all issues which were adjusted by the internal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period of limitations as provided in subsections (b) and (h) of this section, only those specific items of income, deductions, gains, losses or credits which were adjusted in the final federal determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(e) If a claim for credit or refund relates to an overpayment attributable to a net operating loss carryback incurred in a taxable year commencing in 2012 or earlier, or a capital loss carryback, in lieu of the period of limitations prescribed in subsection (b) of this section, the period shall be that period which ends with the expiration of the fifteenth day of the fortieth month following the end of the taxable year of the net operating loss or capital loss which results in such carryback. Claims for net operating losses carried back from taxable years commencing after 2012 shall be made pursuant to section 63-3022, Idaho Code.

(f) If an adjustment, which was made within the period of limitations as provided in this section, affects the amount of tax credit, net operating loss, or capital loss, claimed in a taxable year other than the tax year in which the adjustment is made, then adjustments to the credit, net operating loss, or capital loss, claimed in such other tax year may be made and a claim for credit or refund of tax, penalties or interest may be made even though such claim would otherwise be barred under the provisions of this section.

(g) In the case of a duplicate return filed under section 63-217(1) (b), Idaho Code, the limitations under this section shall be the later of one (1) year from the filing of the duplicate return or the date otherwise applicable under this section.

(h) Prior to the expiration of the time prescribed in this section for credit or refund of any tax imposed by the provisions of this chapter, both the state tax commission or its delegate or deputy and the taxpayer may consent in writing to extend such period of time. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. When a pass-through entity extends the period of limitations in accordance with the provisions of this subsection the period of limitations for the other taxpayers is automatically extended for the same period for the purpose of claiming a credit or refund of tax, penalties or interest by the other taxpayers reflecting the pass-through entity adjustments.

(i) The expiration of the period of limitations as provided in this section shall be suspended for the time period between the issuance by the state tax commission of a notice under either section 63-3045 or 63-3065, Idaho Code, and the final resolution of any proceeding resulting from the notice.

(j) Appeal of a state tax commission decision denying in whole or in part a claim for credit or refund shall be made in accordance with and within the time limits prescribed in section 63-3049, Idaho Code.

(k) For purposes of this section, "return" includes a notice of deficiency determination issued by the state tax commission when no return was filed by the taxpayer. Such a return is deemed filed on the date the taxes determined by the state tax commission are assessed.

History.

I.C., § 63-3072, as added by 1993, ch. 47, § 3, p. 119; am. 1996, ch. 44, § 2, p. 114; am. 2001, ch. 56, § 4, p. 100; am. 2002, ch. 35,

§ 12, p. 66; am. 2007, ch. 10, § 4, p. 10; am. 2011, ch. 45, § 2, p. 102; am. 2013, ch. 4, § 5, p. 7; am. 2013, ch. 112, § 2, p. 268.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 45, added the last sentence in subsection (c).

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 4, inserted "or amounts paid as backup withholding under section 63-3036B, Idaho Code" near the middle of the first sentence in subsections (b) and (c).

The 2013 amendment, by ch. 112, in subsection (e), inserted "incurred in a taxable year commencing in 2012 or earlier" near the beginning of the first sentence and added the last sentence.

Federal References.

Section 7508 of the Internal Revenue Code, referred to in subsection (c), is codified as 26 USCS § 7508.

Compiler's Notes.

Section 2 of S.L. 2013, ch. 1 declared an emergency and made Section 63-3004 retroactive to January 1, 2013; provided however, refund claims arising under Section 1106 of the FAA Modernization and Reform Act (P.L. 112-95) may be filed on or before the later of the date permitted in Section 63-3072, Idaho Code, or April 15, 2013. Approved February 4, 2013.

Effective Dates.

Section 3 of S.L. 2011, ch. 45 declared an emergency retroactively to January 1, 2011. Approved March 9, 2011.

Section 6 of S.L. 2013, ch. 4 declared an emergency and made this section retroactive to January 1, 2013. Approved February 12, 2013.

Section 3 of S.L. 2013, ch. 112 declared an emergency and made this section retroactive to January 1, 2013. Approved March 21, 2013.

RESEARCH REFERENCES

A.L.R. — Construction and operation of statutory time limit for filing claim for state tax refund. 14 A.L.R.6th 119.

63-3077E. Agreements for exchange of information with the state treasurer. — The state tax commission and the state treasurer may enter into a written agreement for exchange of information relating to persons, firms, corporations, partnerships or associations who are or may be conducting business operations in this state or who may be the owners of unclaimed property reported to the state treasurer. Such information shall be confidential to the recipient and may be used only for purposes of administering the provisions of the unclaimed property act in chapter 5, title 14, Idaho

Code. No such information shall be public information unless it is used in the course of a judicial proceeding arising under the laws of this state. The information provided by the tax commission may include the following:

- (1) Names and addresses of businesses within this state.
- (2) The names and addresses of individuals or entities identified as owners or potential owners of unclaimed property in the custody of the state treasurer.
- (3) Taxpayer identifying numbers.

History.

I.C., § 63-3077E, as added by 2010, ch. 202,
§ 6, p. 436; am. 2012, ch. 333, § 1, p. 926.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 333, added subsection (3).

Effective Dates.

Section 7 of S.L. 2010, ch. 202 provided "This act shall be in full force and effect on and after July 1, 2010. All employees employed by the State Tax Commission on June 30, 2010, in administering the State Unclaimed Property Law, and all tangible personal property of the State Tax Commission for those employees used in administering the Unclaimed Property Law shall be transferred

to the State Treasurer on July 1, 2010. Any employee who is a classified employee pursuant to chapter 53, title 67, Idaho Code, of the State Tax Commission and who is transferred to the State Treasurer may remain a classified employee if he or she chooses until such employee terminates, resigns or leaves the current position he or she holds. At that time, the position shall become a nonclassified position pursuant to chapter 16, title 59, Idaho Code."

Section 2 of S.L. 2012, ch. 333 declared an emergency. Approved April 5, 2012.

63-3077F. Information furnished to certain individuals. — In the case of suspected identity theft involving the use of a social security number or other tax identification number, the state tax commission may disclose to the true owner of a social security number or other tax identification number any tax return or tax return information that identifies the individual using the true owner's stolen social security number or other tax identification number.

A disclosure shall be made only after receipt of a valid written information request from the victim of identity theft and would include only information to allow the victim to identify the individual using the stolen social security number or other tax identification number. Any disclosure to the true owner shall not include financial information on the tax returns or other tax information.

History.

I.C., § 63-3077F, as added by 2013, ch. 3,
§ 1, p. 6.

STATUTORY NOTES

Cross References.

State tax commission, Idaho Const., Art. VII, § 12 and § 63-101.

63-3082. Additional tax required when filing income tax return.

— (1) Every person required to file an income tax return shall pay a tax of ten dollars (\$10.00). For this purpose, a husband and wife filing a joint return shall be deemed a single person. This tax shall be in the nature of an excise tax upon the receipt of the income which requires the filing of such return.

(2) A pass-through entity as defined in section 63-3006C, Idaho Code, shall also pay the tax imposed in subsection (1) of this section for each individual included within section 63-3022L, Idaho Code, on the composite return.

(3) For purposes of this section, a husband and wife filing a joint federal return may be deemed a single individual.

History.

1959, ch. 303, § 1, p. 654; am. 1982, ch. 203, § 9, p. 533; am. 1983, ch. 221, § 3, p. 616; am. 1998, ch. 51, § 4, p. 201; am. 1999, ch. 60, § 4,

p. 156; am. 2000, ch. 38, § 2, p. 70; am. 2012, ch. 187, § 3, p. 491; am. 2014, ch. 36, § 3, p. 61.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 187, substituted “a pass-through entity” for “an individual officer, director, shareholder, partner or member of a corporation or partnership” in subsection (2).

The 2014 amendment, by ch. 36, rewrote subsection (2), which formerly read: “When, pursuant to section 63-3022L, Idaho Code, the income tax of a pass-through entity or of a beneficiary of a trust or estate is paid by a corporation, partnership, trust or estate, the

corporation, partnership, trust or estate shall also pay the tax imposed in subsection (1) of this section for each individual”.

Effective Dates.

Section 4 of S.L. 2012, ch. 187 declared an emergency and made this section retroactive to January 1, 2012. Approved March 29, 2012.

Section 4 of S.L. 2014, ch. 36 declared an emergency and made this section retroactive to January 1, 2014.

63-3083. “Person” defined. — “Person” as used in sections 63-3082 through 63-3087, Idaho Code, means any individual, or entity required to file a return under section 63-3030, Idaho Code, unless all of the income or loss is distributed or otherwise reportable as a part of the taxable income of another taxpayer and the entity does not have any Idaho taxable income.

History.

1959, ch. 303, § 2, p. 654; am. 1969, ch. 319, § 22, p. 982; am. 2008, ch. 8, § 1, p. 9.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 8, rewrote the section, which formerly read: “‘Person’ as used in this act shall mean any corporation, individual, or estate, trust, or tax option corporation, the income of which is neither distributed nor otherwise reportable as a part of the taxable income of another taxpayer.”

Effective Dates.

Section 2 of S.L. 2008, ch. 8 declared an emergency retroactively to January 1, 2008 and approved February 13, 2008.

63-3088. Designation by individuals. [Repealed.]

Repealed by S.L. 2010, ch. 3, § 2, effective January 1, 2010.

History.

I.C., § 63-3088, as added by 1975, ch. 132, § 3, p. 290; am. 1978, ch. 94, § 1, p. 180.

STATUTORY NOTES**Compiler's Notes.**

Section 3 of S.L. 2010, ch. 3 provided: "Distribution of moneys. (1) On and after January 1, 2011, any moneys remaining in the Election Campaign Fund established by Section 34-2502, Idaho Code, shall be disbursed in a manner consistent with the provisions of Chapter 25, Title 34, Idaho Code, as that chapter existed on December 31, 2009.

"(2) The State Tax Commission shall not permit the designation on state income tax return forms by individuals as provided for in Section 63-3088, Idaho Code, as that section existed on December 31, 2009, for any income

tax return, amended, late or otherwise filed with the State Tax Commission on or after January 1, 2011. The State Tax Commission shall, in a conspicuous manner on the principal form provided for purposes of individual taxation, notify individuals that such designation shall not be permitted on and after January 1, 2011."

Effective Dates.

Section 4 of S.L. 2010, ch. 3 declared an emergency retroactively to January 1, 2010. Approved February 16, 2010.

CHAPTER 31**ANTICIPATION OF REVENUE BY TAXING DISTRICTS****63-3101. Taxing district defined.****JUDICIAL DECISIONS****Attorney Fees.**

Highway district was entitled to attorney fees under § 12-117 because it was a taxing district pursuant to §§ 40-1308, 63-3101, and property owners' tort, takings, and due process constitutional claims arising from highway maintenance lacked a reasonable basis. *Halvorson v. N. Latah County Highway Dist.*, 151 Idaho 196, 254 P.3d 497, cert. denied, — U.S. —, 132 S. Ct. 118, 181 L. Ed. 2d 42 (2011).

An irrigation district which had the power to levy assessments and taxes to pay for its operation, was a taxing district under this section, and thus would have been entitled to attorney fees under § 12-117 had it properly pled its attorney fee request. *Bettwieser v. New York Irrigation Dist.*, 154 Idaho 317, 297 P.3d 1134 (2013).

CHAPTER 35**COOPERATIVE ELECTRICAL ASSOCIATIONS —
TAXING GROSS EARNINGS****SECTION.**

63-3501. Definitions.

63-3502B. Levy of tax on wind energy or geothermal energy electrical production.

63-3503B. Filing operators' statements — Allotment and apportionment of tax due from producers of elec-

SECTION.

tricity by means of wind energy or geothermal energy by state tax commission.

63-3504. Collection by county treasurer — Penalty and interest imposed when delinquent.

SECTION.

63-3505. Taxes a lien on property of association or producer until paid.

SECTION.

63-3506. Assessment of nonoperating property by assessor.

63-3501. Definitions. — For the purposes of this chapter:

(a) The term “cooperative electrical association” means any nonprofit, cooperative association organized and maintained by its members, whether incorporated or unincorporated, for the purpose of transmitting, distributing or delivering electric power to its members.

(b) The term “cooperative natural gas association” means any nonprofit cooperative association organized and maintained by its members, whether incorporated or unincorporated, for the purpose of transmitting, distributing or delivering natural gas to its members.

(c) The term “cost of power” means the cost of power purchases and generation included in reports to, and in accordance with applicable requirements of, the rural electrification administration, United States department of agriculture, by cooperative electrical associations which are borrowers from the rural electrification administration, and for cooperative electrical associations which are not borrowers from the rural electrification administration, such costs which could have been included by such cooperative electrical associations using equivalent reporting and accounting requirements. The state tax commission shall prescribe necessary rules for the purpose of providing a uniform method of reporting cost of power purchases and generation by cooperative electrical associations, consistent with the reporting and accounting requirements of the rural electrification administration.

(d) The term “cost of gas” means the cost of natural gas purchased by cooperative natural gas associations from wholesale or other suppliers of natural gas for delivery to members of the cooperative natural gas association.

(e) The term “gross electrical earnings” means the gross receipts of a cooperative electrical association from the distribution, delivery and sale of electric power within the state of Idaho, but shall not include any earnings or receipts from the distribution, delivery or sale of electric power consumed in pumping water for irrigation or drainage purposes within the state of Idaho, upon the land of such consumer and for the use and benefit of his own land, and where such consumer has received from the association a refund, rebate, or credit of three and one-half percent (3 1/2%) of the cost to him of the electric power so used and consumed.

(f) The term “gross natural gas earnings” means the gross receipts of a cooperative natural gas association from the distribution, delivery and sale of natural gas within the state of Idaho.

(g) The term “gross wind or geothermal energy earnings” means the gross receipts of a wind energy generator or a geothermal energy generator from the distribution, delivery and sale to a customer for the direct use or resale of electrical energy generated, manufactured or produced by means of wind energy or geothermal energy within the state of Idaho.

(h) The term “operating property” means and includes all real estate, fixtures or personal property owned, controlled, operated or managed by

such electrical or natural gas association, or producer of electricity by means of wind energy or geothermal energy, excluding entities that are regulated by the Idaho public utilities commission as to price, in connection with or to facilitate the generation, transmission, distribution, delivery, or measuring of electric power, natural gas, or electrical energy generated, manufactured or produced by means of wind energy or geothermal energy, excluding entities that are regulated by the Idaho public utilities commission as to price, and all conduits, ducts, or other devices, materials, apparatus or property for containing, holding or carrying conductors used for the transmission, distribution and delivery of electric power, natural gas, or electrical energy generated, manufactured or produced by means of wind energy or geothermal energy, excluding entities that are regulated by the Idaho public utilities commission as to price, including construction tools, materials and supplies.

(i) The term “nonoperating property” means all other property, real or personal, owned, controlled or managed by such electrical or natural gas association.

(j) The term “taxing unit” shall include any of the following that had property taxes levied in the prior year: the separate taxing districts of the county as well as the county itself and any such taxing district’s fund having a different geographical boundary than such taxing district itself.

(k) The term “tax levy” means the total tax levies fixed by each taxing district, as defined herein, in the prior calendar year.

(l) The term “WPPSS 4 and 5 costs” means, for a cooperative electrical association which is a participant under the Washington public power supply system nuclear projects numbers 4 and 5 participants’ agreement, dated July 14, 1976, all of its costs in connection with Washington public power supply system nuclear projects numbers 4 and 5.

(m) The term “weighted wire mileage factor” means a figure which is arrived at by multiplying the tax levy of each taxing unit by the number of wire miles of transmission and distribution lines of such cooperative electrical association situated in such taxing unit.

(n) The term “gas line mileage factor” means a figure which is arrived at by multiplying the tax levy of each taxing unit by the number of miles of natural gas transmission and distribution lines of such cooperative natural gas association situated in such taxing unit.

History.

1959, ch. 237, § 1, p. 507; am. 1961, ch. 301, § 1, p. 560; am. 1983, ch. 164, § 1, p. 469; am.

1998, ch. 132, § 1, p. 486; am. 2007, ch. 143, § 1, p. 415; am. 2008, ch. 227, § 1, p. 693.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 227, throughout subsections (g) and (h), inserted references to “geothermal energy” and “geothermal energy generator.”

Effective Dates.

Section 9 of S.L. 2008, ch. 227 declared an emergency retroactively to January 1, 2008. Approved March 20, 2008.

63-3502B. Levy of tax on wind energy or geothermal energy electrical production. — There shall be levied against every producer of electricity by means of wind energy or geothermal energy a wind energy tax or a geothermal energy tax equal to three percent (3%) of such producer's gross wind energy earnings or geothermal energy earnings. This wind energy tax or geothermal energy tax shall be in lieu of all other taxes on the operating property, as defined in section 63-3501(h), Idaho Code, of such wind energy producer or of such geothermal energy producer.

History.

I.C., § 63-3502B, as added by 2007, ch. 143,
§ 2, p. 415; am. 2008, ch. 227, § 2, p. 695.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 227, inserted references to "geothermal energy" throughout the section.

Effective Dates.

Section 9 of S.L. 2008, ch. 227 declared an emergency retroactively to January 1, 2008. Approved March 20, 2008.

63-3503B. Filing operators' statements — Allotment and apportionment of tax due from producers of electricity by means of wind energy or geothermal energy by state tax commission. — Every producer of electricity by means of wind energy or by means of geothermal energy in this state shall file with the state tax commission of the state of Idaho an operator's statement in the manner as provided for in section 63-404, Idaho Code, and shall include thereon a statement of the prior calendar year's gross wind energy earnings or gross geothermal energy earnings. Upon examining and verifying said statement, the state tax commission shall compute the amount of the wind energy tax or the geothermal energy tax based on the gross wind energy earnings or the gross geothermal energy earnings and shall allot to each county in which the operating property of such producer is situate either: that proportion of the total wind energy tax or that proportion of the total geothermal energy tax of such producer shown to be due as the same proportion that the total original cost of operating property situate in such county bears to the total original cost of operating property of such producer for the wind energy project or of such producer for the geothermal energy project. The state tax commission shall then, for each county, apportion the wind energy tax or geothermal energy tax so allotted to such county among the several taxing units thereof within which any operating property of such producer is situate, by apportioning to each such taxing unit that proportion of the wind energy tax or geothermal energy tax so allotted to such county. For such apportionment, the state tax commission shall calculate the weighted original cost which shall be the product of the original cost of such operating property within such taxing unit times such taxing unit's property tax levy for the prior year and the weighted apportionment rate which shall be the ratio of the wind energy tax or of the geothermal energy tax as the case may be, allotted to such county, to the aggregate weighted original cost for all such taxing units within which the operating property is located and then

shall calculate the apportionment of the wind energy tax or geothermal energy tax for each such taxing unit to be equal to the product of the weighted original cost times the weighted apportionment rate. The state tax commission shall, on or before the second Monday in August, notify the state superintendent of public instruction, the county auditor, and the county treasurer of such allotment and apportionment and the amounts thereof. On or before the third Monday in August, the county auditor shall notify the appropriate taxing units of the amount of wind energy tax or the amount of the geothermal energy tax being apportioned.

History.

I.C., § 63-3503B, as added by 2007, ch. 143, § 3, p. 415; am. 2008, ch. 227, § 3, p. 695.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 227, inserted references to "geothermal energy" throughout the section.

Effective Dates.

Section 9 of S.L. 2008, ch. 227 declared an emergency retroactively to January 1, 2008. Approved March 20, 2008.

63-3504. Collection by county treasurer — Penalty and interest imposed when delinquent. — Upon receipt of the notification of the allotment and apportionment of such taxes by the state tax commission by the county treasurer, said county treasurer shall, not later than June 15 of each year, notify each cooperative electrical association, natural gas cooperative, and producer of electricity by means of wind energy or by means of geothermal energy, of the amount of taxes owed, and the apportionment thereof to the county and to the several taxing districts in the county and such tax shall be due and payable not later than July 1, following and, upon the payment thereof, the county treasurer shall pay over to each taxing district its apportionment as herein determined. Any such taxes not paid by July 1, as aforesaid, shall become delinquent and a penalty of five percent (5%) thereof shall be imposed, together with interest at the rate of one percent (1%) per month from July 1 until paid.

History.

1959, ch. 237, § 4, p. 507; am. 1998, ch. 132,

§ 6, p. 486; am. 2007, ch. 143, § 4, p. 415; am. 2008, ch. 227, § 4, p. 696.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 227, inserted "or by means of geothermal energy" in the first sentence.

Effective Dates.

Section 9 of S.L. 2008, ch. 227 declared an emergency retroactively to January 1, 2008. Approved March 20, 2008.

63-3505. Taxes a lien on property of association or producer until paid. — All taxes due and payable under this chapter shall be a lien on all property, real and personal, of the electrical, or natural gas association, or the producer of electricity by means of wind energy or by means of geothermal energy, owing the same, as of June 15 of each year and shall be discharged only by the payment thereof. In any action to enforce payment of

any delinquent taxes due under this chapter, the county prosecuting such action shall be entitled to a judgment for the reasonable costs of prosecuting such action, as well as for the delinquent taxes, penalty and interest.

History. § 7, p. 486; am. 2007, ch. 143, § 5, p. 415; am. 1959, ch. 237, § 5, p. 507; am. 1998, ch. 132, 2008, ch. 227, § 5, p. 697.

STATUTORY NOTES

Amendments. The 2008 amendment, by ch. 227, inserted “or by means of geothermal energy” in the first sentence.

Effective Dates. Section 9 of S.L. 2008, ch. 227 declared an emergency retroactively to January 1, 2008. Approved March 20, 2008.

63-3506. Assessment of nonoperating property by assessor. — The nonoperating property of any cooperative electrical or natural gas association, or producer of electricity by means of wind energy or by means of geothermal energy, shall be assessed by the county assessor of the county wherein such property is situate, and taxes levied against the same shall be a lien, and shall be due and payable, in the same manner as are any other taxes on property.

History. § 8, p. 486; am. 2007, ch. 143, § 6, p. 415; am. 1959, ch. 237, § 6, p. 507; am. 1998, ch. 132, 2008, ch. 227, § 6, p. 697.

STATUTORY NOTES

Amendments. The 2008 amendment, by ch. 227, inserted “or by means of geothermal energy.”

emergency retroactively to January 1, 2008. Approved March 20, 2008.

Effective Dates. Section 9 of S.L. 2008, ch. 227 declared an

CHAPTER 36
SALES TAX

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| <p>SECTION.</p> <p>63-3607A. Primary or primarily.</p> <p>63-3611. Retailer engaged in business in this state.</p> <p>63-3613. Sales price.</p> <p>63-3615A. Substantial nexus.</p> <p>63-3616. Tangible personal property.</p> <p>63-3621. Imposition and rate of the use tax — Exemptions.</p> <p>63-3622D. Production exemption.</p> <p>63-3622K. Occasional sales.</p> <p>63-3622M. Liquor sales.</p> <p>63-3622N. Prescriptions.</p> <p>63-3622O. Exempt private and public organizations.</p> <p>63-3622R. Motor vehicles, used manufactured homes, vessels, all-terrain vehicles, trailers, off-road motorcycles, snowmobiles and glider kits.</p> | <p>SECTION.</p> <p>63-3622FF. Purchases made with SNAP benefit cards.</p> <p>63-3622GG. Aircraft. [Null and void, effective June 30, 2016.]</p> <p>63-3622HH. Production exemption shall not apply to sales regarding recreation-related vehicles.</p> <p>63-3622QQ. Equipment used in alternative method of generation of electricity. [Null and void.]</p> <p>63-3622TT. Media production project tax rebate. [Effective until July 1, 2016.]</p> <p>63-3622UU. Personal property tax on rentals.</p> <p>63-3638. Sales tax — Distribution.</p> <p>63-3638A. Sales tax on liquor to be paid to liquor account.</p> <p>63-3641. Rebate of sales taxes collected.</p> |
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63-3607A. Primary or primarily. — (1) With respect to the use of tangible personal property, “primary” or “primarily” means the predominant or greatest use of the property.

(2) In determining the primary use of tangible personal property, all uses of the property shall be aggregated into total taxable uses and total nontaxable uses pursuant to the provisions of this chapter. The primary use shall be the greater of the total taxable use or total nontaxable use.

(3) The use of tangible personal property shall be measured in terms of hours, miles, gallons or other measure commonly or customarily used to measure or determine use of the property.

History.

I.C., § 63-3607A, as added by 2013, ch. 8,
§ 1, p. 17.

63-3611. Retailer engaged in business in this state. — “Retailer engaged in business in this state” as used in this chapter means any retailer who:

(1) Engages in recurring solicitation of purchases from residents of this state or otherwise purposefully directs its business activities at residents of this state; and

(2) Has sufficient contact with this state, in accordance with the constitution of the United States, to allow the state to require the seller to collect and remit use tax on sales of tangible personal property or services made to customers in this state.

(3) The term includes any of the following:

(a) Any retailer maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business or maintaining a stock of goods.

(b) Any retailer having any representative, agent, salesman, canvasser or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing or the taking of orders for any tangible personal property.

(c) Any retailer, with respect to a lease or rental, deriving rentals from a lease or rental of tangible personal property situated in this state.

(d) Any retailer engaging in any activity in connection with servicing or installing tangible personal property in this state.

(e) Any retailer with substantial nexus in this state within the meaning of section 63-3615A, Idaho Code.

(f) Any retailer having a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under the provisions of this section.

History.

I.C., § 63-3611, as added by 1989, ch. 311,
§ 2, p. 806; am. 1995, ch. 54, § 2, p. 122; am.

1998, ch. 49, § 1, p. 199; am. 2008, ch. 49, § 1,
p. 120.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 49, rewrote subsection (3)(e), which formerly read: "Any retailer owned or controlled by the same in-

terests which own or control any retailer engaged in business in the same or a similar line of business in this state."

63-3612. Sale.

JUDICIAL DECISIONS

Cited in: Gracie, LLC v. Idaho State Tax Comm'n, 149 Idaho 570, 237 P.3d 1196 (2010).

63-3613. Sales price. — (a) The term "sales price" means the total amount for which tangible personal property, including services agreed to be rendered as a part of the sale, is sold, rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold. However, in accordance with such rules as the state tax commission may prescribe, a deduction may be taken if the retailer has purchased property for some purpose other than resale or rental, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold or rented the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.
2. The cost of materials used, labor or service cost, losses, or any other expense.
3. The cost of transportation of the property prior to its sale.
4. The face value of manufacturer's discount coupons. A manufacturer's discount coupon is a price reduction coupon presented by a consumer to a retailer upon purchase of a manufacturer's product, the face value of which may only be reimbursed by the manufacturer to the retailer.

(b) The term "sales price" does not include any of the following:

1. Retailer discounts allowed and taken on sales, but only to the extent that such retailer discounts represent price adjustments as opposed to cash discounts offered only as an inducement for prompt payment.
2. Any sums allowed on merchandise accepted in payment of other merchandise, provided that this allowance shall not apply to the sale of a "new manufactured home" or a "modular building" as defined herein.
3. The amount charged for property returned by customers when the amount charged therefor is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.
4. The amount charged for labor or services rendered in installing or applying the property sold, provided that said amount is stated separately

and such separate statement is not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property; except that charges by a manufactured homes dealer for set up of a manufactured home shall be included in the "sales price" of such manufactured home.

5. The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

6. The amount charged for finance charges, carrying charges, service charges, time-price differential, or interest on deferred payment sales, provided such charges are not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property.

7. Delivery and handling charges for transportation of tangible personal property to the consumer, provided that the transportation is stated separately and the separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property; except that charges by a manufactured homes dealer for transportation of a manufactured home shall be included in the "sales price" of such manufactured home.

8. Manufacturers' rebates when used at the time of a retail sale as a down payment on or reduction to the retail sales price of a motor vehicle to which the rebate applies. A manufacturer's rebate is a cash payment made by a manufacturer to a consumer who has purchased or is purchasing the manufacturer's product from the retailer.

9. The amount of any fee imposed upon an outfitter as defined in section 36-2102, Idaho Code, by a governmental entity pursuant to statute for the purpose of conducting outfitting activities on land or water subject to the jurisdiction of the governmental entity, provided that the fee is stated separately and is presented as a use fee paid by the outfitted public to be passed through to the governmental entity.

10. The amount of any discount or other price reduction on telecommunications equipment when offered as an inducement to the consumer to commence or continue telecommunications service, or the amount of any commission or other indirect compensation received by a retailer or seller as a result of the consumer commencing or continuing telecommunications service.

(c) The sales price of a "new manufactured home" or a "modular building" as defined in this chapter shall be limited to and include only fifty-five percent (55%) of the sales price as otherwise defined herein.

(d) Taxes previously paid on amounts represented by accounts found to be worthless may be credited upon a subsequent payment of the tax provided in this chapter or, if no such tax is due, refunded. If such accounts are thereafter collected, a tax shall be paid upon the amount so collected.

(e) Tangible personal property when sold at retail for more than eleven cents (11¢) but less than one dollar and one cent (\$1.01) through a vending machine shall be deemed to have sold at a sales price equal to one hundred seventeen percent (117%) of the price which is paid for such tangible personal property and/or its component parts including packaging by the owner or operator of the vending machines.

(f) Sales price shall not include a gratuity or tip received when paid to the service provider of a meal. The gratuity or tip can be either voluntary or mandatory, but must be given for the service provided and as a supplement to the service provider's income.

History.

1965, ch. 195, § 13, p. 408; am. 1967, ch. 290, § 4, p. 805; am. 1969, ch. 261, § 1, p. 800; am. 1976, ch. 297, § 2, p. 1025; am. 1977, ch. 36, § 1, p. 64; am. 1983, ch. 247, § 1, p. 667; am. 1984, ch. 287, § 1, p. 670; am. 1986,

ch. 30, § 12, p. 84; am. 1986, ch. 300, § 1, p. 748; am. 1990, ch. 352, § 1, p. 944; am. 1990, ch. 438, § 1, p. 1206; am. 1994, ch. 111, § 1, p. 244; am. 1996, ch. 46, § 3, p. 119; am. 1996, ch. 433, § 1, p. 1467; am. 1999, ch. 42, § 3, p. 84; am. 2011, ch. 230, § 1, p. 628.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 230, substituted "this chapter" for "this act" in subsection (c) and added subsection (f).

Effective Dates.

Section 2 of S.L. 2011, ch. 230 declared an emergency retroactively to January 1, 2011. Approved April 6, 2011.

63-3615. Storage — Use.

JUDICIAL DECISIONS

Use Defined.

Customers at a tanning salon do not rent nor have full "use" of the equipment in the salon; rather, they purchase tanning services from the salon, whose owners do not qualify

for a statutory resale exemption and are responsible for the use tax owed on the equipment bought outside of the state. *Gracie, LLC v. Idaho State Tax Comm'n*, 149 Idaho 570, 237 P.3d 1196 (2010).

63-3615A. Substantial nexus. — (1) Subject to the limitation in subsection (2) of section 63-3611, Idaho Code, a retailer has substantial nexus with this state if both of the following apply:

- (a) The retailer and an in-state business maintaining one (1) or more locations within this state are related parties; and
 - (b) The retailer and the in-state business use an identical or substantially similar name, trade name, trademark or goodwill to develop, promote or maintain sales, or the in-state business provides services to, or that inure to the benefit of, the out-of-state business related to developing, promoting or maintaining the in-state market.
- (2) Two (2) entities are related parties under this section if they meet any one (1) of the following tests:

- (a) Both entities are component members of the same controlled group of corporations under section 1563 of the Internal Revenue Code;
- (b) One (1) entity is a related taxpayer to the other entity under the provisions of section 267 of the Internal Revenue Code;
- (c) One (1) entity is a corporation and the other entity and any party, for which section 318 of the Internal Revenue Code requires an attribution of ownership of stock from that party to the entity, own directly, indirectly, beneficially, or constructively at least fifty percent (50%) of the value of the outstanding stock of the corporation; or
- (d) One (1) or both entities is a limited liability company, partnership, estate or trust, none of which is treated as a corporation for federal income tax purposes, and such limited liability company, partnership, estate or

trust and its members, partners or beneficiaries own in the aggregate directly, indirectly, beneficially, or constructively at least fifty percent (50%) of the profits, capital, stock or value of the other entity or both entities.

(3) The provisions of this section shall not apply to a retailer that had sales in this state in the previous year in an amount of less than one hundred thousand dollars (\$100,000).

(4) The definition of "Internal Revenue Code" in section 63-3004, Idaho Code, shall apply to this section.

History.

I.C., § 63-3615A, as added by 2008, ch. 49,
§ 2, p. 121.

STATUTORY NOTES

Federal References.

The reference to sections of the internal revenue code, in subsection (2), are codified as

those section numbers within title 26 of the United States Code.

RESEARCH REFERENCES

Idaho Law Review. — The Enigma of Sales Taxation Through the Use of State or Federal "Amazon" Laws: Are We Getting Any- where? Neal A. Koskella. 49 Idaho L. Rev. 121 (2012).

63-3616. Tangible personal property. — (a) The term "tangible personal property" means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.

(b) The term "tangible personal property" includes any computer software except the following: custom computer programs; computer software that is delivered electronically; remotely accessed computer software; and computer software that is delivered by the load and leave method where the vendor or its agent loads the software at the user's location but does not transfer any tangible personal property containing the software to the user. As used in this subsection, the term "remotely accessed computer software" means computer software that a user accesses over the internet, over private or public networks, or through wireless media, where the user has only the right to use or access the software by means of a license, lease, subscription, service or other agreement. Notwithstanding the foregoing exclusions of certain types of computer software from the definition of tangible personal property, tangible personal property shall include computer software that constitutes digital music, digital books, digital videos and digital games, regardless of the method by which the title, possession or right to use such software is transferred to the user. As used in this subsection, the term "digital videos" means prerecorded video products and shall not include live broadcasts, television or cable broadcasts or video conferencing products.

(i) As used in this subsection, the term "computer software" means any computer program, part of a program or any sequence of instructions for

automatic data processing equipment or information stored in an electronic medium.

(ii) As used in this subsection, the term “custom computer program” means any computer software, as defined in this subsection, which is written or prepared exclusively for a customer and includes those services represented by separately stated charges for the modification of existing prewritten programs when the modifications are written or prepared exclusively for a customer. The term does not include a “canned” or prewritten program which is held or existing for general or repeated sale, lease or license, even if the program was initially developed on a custom basis or for in-house use. Modification to an existing prewritten program to meet the customer’s needs is custom computer programming only to the extent of the modification, and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements, and other billing documents supplied to the purchaser.

(c) The term “tangible personal property” does not include advertising space when sold to an advertiser or its agent by the publisher of the newspaper or the magazine in which the advertisement is displayed or circulated.

History.

1965, ch. 195, § 16, p. 408; am. 1986, ch. 192, § 1, p. 488; am. 1993, ch. 26, § 2, p. 87;

am. 1998, ch. 50, § 1, p. 200; am. 2013, ch. 271, § 1, p. 707; am. 2014, ch. 340, § 1, p. 858.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 270, in subsection (b), added “and is not application software accessed over the internet or through wireless media” in the introductory paragraph and added paragraph (iii).

The 2014 amendment, by ch. 340, rewrote subsection (b), which formerly read: “The term ‘tangible personal property’ includes any computer software that is not a custom computer program and is not application software accessed over the internet or through wireless media”; deleted the former second sentence in

paragraph (b)(i), which read: “Computer software is deemed to be tangible personal property for purposes of this chapter regardless of the method by which the title, possession or right to use the software is transferred to the user”; and deleted former paragraph (b)(iii), which defined “application software accessed over the internet or through wireless media”.

Effective Dates.

Section 2 of S.L. 2013, ch. 270 declared an emergency. Approved April 3, 2013.

63-3621. Imposition and rate of the use tax — Exemptions. — An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after October 1, 2006, for storage, use, or other consumption in this state at the rate of six percent (6%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property unless the property is wireless telecommunications equipment, in which case a recent sales price shall be conclusive evidence of the value of the property.

(a) Every person storing, using, or otherwise consuming, in this state, tangible personal property is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or engaged in

business in this state given to the purchaser is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers. A retailer shall not be considered to have stored, used or consumed wireless telecommunications equipment by virtue of giving, selling or otherwise transferring such equipment at a discount as an inducement to a consumer to commence or continue a contract for telecommunications service.

(b) Every retailer engaged in business in this state, and making sales of tangible personal property for the storage, use, or other consumption in this state, not exempted under section 63-3622, Idaho Code, shall, at the time of making the sales or, if storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the state tax commission.

(c) The provisions of this section shall not apply when the retailer pays sales tax on the transaction and collects reimbursement for such sales tax from the customer.

(d) Every retailer engaged in business in this state or maintaining a place of business in this state shall register with the state tax commission and give the name and address of all agents operating in this state, the location of all distributions or sales houses or offices or other places of business in this state, and such other information as the state tax commission may require.

(e) For the purpose of the proper administration of this act and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this state is sold for storage, use, or other consumption in this state. The burden of proving the sale is tax exempt is upon the person who makes the sale unless he obtains from the purchaser a resale certificate to the effect that the property is purchased for resale or rental. It shall be presumed that sales made to a person who has completed a resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property purchased is taxable to the purchaser as a matter of law in the particular instance claimed on the resale certificate.

A seller may accept a resale certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. The resale certificate relieves the person selling the property from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds the permit provided for by section 63-3620, Idaho Code, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. Other than as provided elsewhere in this section, when a resale certificate, properly executed, is presented to the seller, the seller has no duty or obligation to collect sales or use taxes in

regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter.

The resale certificate shall bear the name and address of the purchaser, shall be signed by the purchaser or his agent, shall indicate the number of the permit issued to the purchaser, or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the state tax commission may prescribe.

(f) If a purchaser who gives a resale certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used.

(g) Any person violating any provision of this section is guilty of a misdemeanor and punishable by a fine not in excess of one hundred dollars (\$100), and each violation shall constitute a separate offense.

(h) It shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer, for storage, use or other consumption in this state.

(i) It shall be presumed that tangible personal property delivered outside this state to a purchaser known by the retailer to be a resident of this state was purchased from a retailer for storage, use, or other consumption in this state. This presumption may be controverted by evidence satisfactory to the state tax commission that the property was not purchased for storage, use, or other consumption in this state.

(j) When the tangible personal property subject to use tax has been subjected to a general retail sales or use tax by another state of the United States in an amount equal to or greater than the amount of the Idaho tax, and evidence can be given of such payment, the property will not be subject to Idaho use tax. If the amount paid the other state was less, the property will be subject to use tax to the extent that the Idaho tax exceeds the tax paid to the other state. For the purposes of this subsection, a registration certificate or title issued by another state or subdivision thereof for a vehicle or trailer or a vessel as defined in section 67-7003, Idaho Code, shall be sufficient evidence of payment of a general retail sales or use tax.

(k) The use tax herein imposed shall not apply to the use by a nonresident of this state of a motor vehicle which is registered or licensed under the laws of the state of his residence and is not used in this state more than a cumulative period of time totaling ninety (90) days in any consecutive twelve (12) months, and which is not required to be registered or licensed under the laws of this state. The use tax herein shall also not apply to any use of a motor vehicle which is registered or licensed under the laws of the state of residence of a nonresident student while such nonresident student is enrolled as a full-time student in an institution of postsecondary education that is both physically located in Idaho and recognized as accredited by the state board of education.

(l) The use tax herein imposed shall not apply to the use of household goods, personal effects and personally owned vehicles or personally owned aircraft by a resident of this state if such articles were acquired by such person in another state while a resident of that state and primarily for use outside this state and if such use was actual and substantial, but if an article was acquired less than three (3) months prior to the time he entered this state, it will be presumed that the article was acquired for use in this state and that its use outside this state was not actual and substantial. The use tax herein imposed shall not apply to the use of household goods, personal effects and personally owned vehicles or personally owned aircraft by active duty military personnel temporarily assigned in this state and spouses who accompany them if such articles were acquired prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter. For purposes of this subsection, "resident" shall be as defined in section 63-3013 or 63-3013A, Idaho Code.

(m) The use tax herein imposed shall not apply to the storage, use or other consumption of tangible personal property which is or will be incorporated into real property and which has been donated to and has become the property of:

- (1) A nonprofit organization as defined in section 63-3622O, Idaho Code; or
- (2) The state of Idaho; or
- (3) Any political subdivision of the state.

This exemption applies whether the tangible personal property is incorporated in real property by the donee, a contractor or subcontractor of the donee, or any other person.

(n) The use tax herein imposed shall not apply to tastings of food and beverages including, but not limited to, wine and beer. For the purposes of this subsection, a tasting of wine and beer shall be defined as the maximum serving allowed by state or federal laws for such occasions provided to a potential customer, at no charge, at a location where like or similar beverages are sold. For nonalcoholic beverages and food, a tasting shall be defined as a sample from a unit available for sale at the tasting location.

(o) The use tax herein imposed shall not apply to donations of food or beverages, or both, to individuals or nonprofit organizations. For the purposes of this section, "nonprofit organization" means those nonprofit entities currently registered with the secretary of state pursuant to section 30-3-2, Idaho Code.

History.

1965, ch. 195, § 21, p. 408; am. 1967, ch. 290, § 6, p. 805; am. 1980, ch. 291, § 1, p. 759; am. 1983, ch. 220, § 1, p. 613; am. 1984, ch. 287, § 3, p. 670; am. 1987, ch. 31, § 3, p. 47; am. 1988, ch. 265, § 581, p. 549; am. 1990, ch. 439, § 2, p. 1208; am. 1991, ch. 1, §§ 2, 5, p. 3; am. 1991, ch. 82, § 1, p. 183; am. 1991, ch. 176, § 4, p. 428; am. 1992, ch. 7, § 1, p. 11; am. 1992, ch. 16, § 4, p. 11; am. 1994, ch. 111,

§ 3, p. 244; am. 1996, ch. 46, § 7, p. 119; am. 1996, ch. 433, § 2, p. 1467; am. 1999, ch. 42, § 4, p. 84; am. 2001, ch. 57, § 1, p. 107; am. 2003, ch. 318, § 3, p. 870; am. 2006 (1st E.S.), ch. 1, § 19, p. 39; am. 2009, ch. 91, § 1, p. 265; am. 2011, ch. 18, § 1, p. 55; am. 2011, ch. 278, § 1, p. 756; am. 2012, ch. 55, § 1, p. 154; am. 2013, ch. 34, § 2, p. 74; am. 2013, ch. 113, § 1, p. 272; am. 2014, ch. 113, § 1, p. 322.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 91, substituted “personally owned vehicles or personally owned aircraft” for “personally owned motor vehicles” in the first sentence in subsection (l).

This section was amended by two 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 18, inserted “or military personnel temporarily assigned in this state and spouses who accompany them” in the first sentence in subsection (l).

The 2011 amendment, by ch. 278, added the second sentence in subsection (k).

The 2012 amendment, by ch. 55, added subsection (n).

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 34, in subsection (l), deleted “or military personnel temporarily assigned in this state and spouses who accompany them” following “of this state”

near the beginning of the first sentence and added the second sentence.

The 2013 amendment, by ch. 113, in subsection (n), substituted “tastings of food and beverages” for “free tastings of beverages” in the first sentence, rewrote the second sentence, which read “For the purposes of this subsection, a free tasting shall be defined as a beverage provided to a potential customer, at no charge, and to occur individually at that specific location and time”, and added the last sentence.

The 2014 amendment, by ch. 113, added subsection (o).

Effective Dates.

Section 2 of S.L. 2011, ch. 278 declared an emergency retroactively to January 1, 2011. Approved April 11, 2011.

Section 2 of S.L. 2012, ch. 55 declared an emergency. Approved March 13, 2012.

Section 2 of S.L. 2013, ch. 113 declared an emergency. Approved March 21, 2013.

Section 2 of S.L. 2014, ch. 113 declared an emergency. Approved March 18, 2014.

JUDICIAL DECISIONS

Tanning Salons.

Customers at a tanning salon do not rent nor have full “use” of the equipment in the salon: rather, they purchase tanning services from the salon, whose owners do not qualify

for a statutory resale exemption and are responsible for the use tax owed on the equipment bought outside of the state. *Gracie, LLC v. Idaho State Tax Comm’n*, 149 Idaho 570, 237 P.3d 1196 (2010).

RESEARCH REFERENCES

Idaho Law Review. — The Enigma of Sales Taxation Through the Use of State or Federal “Amazon” Laws: Are We Getting Any-

where? Neal A. Koskella. 49 Idaho L. Rev. 121 (2012).

63-3622D. Production exemption. — There are exempted from the taxes imposed by this chapter:

- (a) The sale at retail, storage, use or other consumption in this state of:
 - (1) Tangible personal property which will enter into and become an ingredient or component part of tangible personal property manufactured, processed, mined, produced or fabricated for sale.
 - (2) Tangible personal property primarily and directly used or consumed in or during a manufacturing, processing, mining, farming, or fabricating operation, including, but not limited to, repair parts, lubricants, hydraulic oil, and coolants, which become a component part of such tangible personal property; provided that the use or consumption of such tangible personal property is necessary or essential to the performance of such operation.
 - (3) Chemicals, catalysts, and other materials which are used for the purpose of producing or inducing a chemical or physical change in the

product or for removing impurities from the product or otherwise placing the product in a more marketable condition as part of an operation described in subsection (a)(2) of this section, and chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries.

(4) Safety equipment and supplies required to meet a safety standard of a state or federal agency when such safety equipment and supplies are used as part of an operation described in subsection (a)(2) of this section.

(5) Plants to be used as part of a farming operation.

(b) Other than as provided in subsection (c) of this section, the exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section are available only to a business or separately operated segment of a business which is primarily devoted to producing tangible personal property which that business will sell and which is intended for ultimate sale at retail within or without this state. A contractor providing services to a business entitled to an exemption under this section is not exempt as to any property owned, leased, rented or used by it unless, as a result of the terms of the contract, the use of the property is exempt under section 63-3615(b), Idaho Code.

(c) The exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section shall also be available to a business, or separately operated segment of a business, engaged in farming or mining, whether as a subcontractor, contractor, contractee or subcontractee, when such business or segment of a business is primarily devoted to producing tangible personal property which is intended for ultimate sale at retail within or without this state, without regard to the ownership of the product being produced.

(d) The exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section shall also be available to a business, or separately operated segment of a business, engaged in the business of processing materials, substances or commodities for use as fuel for the production of energy, whether as a subcontractor, contractor, contractee or subcontractee, without regard to the ownership of the materials, substances or commodities being processed and irrespective of whether the materials, substances or commodities being processed are intended for ultimate sale at retail within or without this state.

(e) As used in this section, the term "directly used or consumed in or during" a farming operation means the performance of a function reasonably necessary to the operation of the total farming business, including, the planting, growing, harvesting and initial storage of crops and other agricultural products and movement of crops and produce from the place of harvest to the place of initial storage. It includes disinfectants used in the dairy industry to clean cow udders or to clean pipes, vats or other milking equipment.

(f) The exemptions allowed in this section do not include machinery, equipment, materials and supplies used in a manner that is incidental to the manufacturing, processing, mining, farming or fabricating operations such as maintenance and janitorial equipment and supplies.

(g) Without regard to the use of such property, this section does not exempt:

- (1) Hand tools with a unit purchase price not in excess of one hundred dollars (\$100). A hand tool is an instrument used or worked by hand.
- (2) Tangible personal property used in any activities other than the actual manufacturing, processing, mining, farming or fabricating operations such as office equipment and supplies, and equipment and supplies used in selling or distributing activities.
- (3) Property used in transportation activities.
- (4) Machinery, equipment, tools or other property used to make repairs. This subsection does not include repair parts that become a component part of tangible property exempt from tax under this section or lubricants, hydraulic oil, or coolants used in the operation of tangible personal property exempt under this section.
- (5) Machinery, equipment, tools or other property used to manufacture, fabricate, assemble or install tangible personal property which is:
 - (i) Not held for resale in the regular course of business; and
 - (ii) Owned by the manufacturer, processor, miner, farmer or fabricator; provided, however, this subsection does not prevent exemption of machinery, equipment, tools or other property exempted from tax under subsection (a)(2) or (a)(3) of this section.
- (6) Any improvement to real property or fixture thereto or any tangible personal property which becomes or is intended to become a component of any real property or any improvement or fixture thereto.
- (7) Motor vehicles and aircraft.
- (8) Tangible personal property used or consumed in processing, producing or fabricating tangible personal property exempted from tax under this chapter in sections 63-3622F and 63-3622I, Idaho Code.
- (9) Tangible personal property described in section 63-3622HH, Idaho Code.
- (h) Any tangible personal property exempt under this section which ceases to qualify for this exemption, and does not qualify for any other exemption or exclusion of the taxes imposed by this chapter, shall be subject to use tax based upon its value at the time it ceases to qualify for exemption. Any tangible personal property taxed under this chapter which later qualifies for this exemption shall not entitle the owner of it to any claim for refund.

History.

I.C., § 63-3622D, as added by 1984, ch. 239, § 5, p. 570; am. 1987, ch. 326, § 2, p. 682; am. 1989, ch. 257, § 2, p. 632; am. 1990, ch. 122, § 1, p. 292; am. 1990, ch. 431, § 2, p. 1195; am. 1990, ch. 437, § 1, p. 1205; am. 1991, ch.

321, § 3, p. 833; 1993, ch. 319, § 2, p. 1175; am. 1996, ch. 46, § 9, p. 119; am. 1999, ch. 42, § 6, p. 84; am. 2005, ch. 242, § 3, p. 752; am. 2006, ch. 315, § 1, p. 980; am. 2008, ch. 233, § 1, p. 710.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 233, added

subsection (d) and redesignated the subsequent subsections accordingly.

63-3622K. Occasional sales. — (a) There are exempted from the taxes imposed by this chapter occasional sales of tangible personal property.

(b) As used in this section, the term “occasional sale” means:

(1) A sale of property not held or used by a person in the course of an activity for which he is required to hold a seller’s permit, provided such sale is not one (1) of a series of sales sufficient in number or of such a nature as to constitute the seller a “retailer” under section 63-3610(c), Idaho Code. The definition of “occasional sales” provided in this subsection does not apply to use tax in regard to tangible personal property used to improve real property when such property is obtained, directly or indirectly, from a person in the business of making like or similar improvements to real property.

(2) Any transfer of all or substantially all of the property held or used by a person in a business requiring a seller’s permit when, after such transfer, the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For the purpose of this section, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having a “real or ultimate ownership” of the property of such corporation or other entity.

(3) A transfer of capital assets to or by a business when the transfer is accomplished through an adjustment of the beneficial interest of the business and the transferor has paid sales or use taxes pursuant to section 63-3619 or 63-3621, Idaho Code, on the capital assets, incidental to:

(i) A division of joint venture, partnership, or limited liability company assets among the members or partners in exchange for a proportional reduction of the transferee’s interest in the joint venture, partnership, or limited liability company. For the purposes of this section, the term “limited liability company” means a business organization as defined in chapter 6, title 53, Idaho Code, or as defined in section 30-6-102, Idaho Code, as appropriate pursuant to section 30-6-1104, Idaho Code;

(ii) The formation of a partnership, joint venture, or limited liability company by the transfer of assets to the partnership, joint venture, or limited liability company or transfers to a partnership, joint venture, or limited liability company in exchange for proportionate interests in the partnership, joint venture, or limited liability company;

(iii) The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for stock in proportion to assets contributed;

(iv) The transfer of assets of shareholders in the formation or dissolution of a corporation;

(v) The transfer of capital assets by a corporation to its stockholders in exchange for surrender of capital stock;

(vi) The transfer of assets from a parent corporation to a subsidiary corporation which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;

(vii) The transfer of assets from a subsidiary corporation which is owned at least eighty percent (80%) by the parent corporation to a parent corporation or another subsidiary which is owned at least eighty

percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets.

(4) The sale, lease or rental of a capital asset in substantially the same form as acquired by the transferor and on which the initial transferor has paid sales or use taxes pursuant to section 63-3619 or 63-3621, Idaho Code, when the owners of all of the outstanding stock, equity or interest of the transferor are the same as the transferee or are members of the same family within the second degree of consanguinity or affinity.

(5) The sale of substantially all of the operating assets of a business or of a separate division, branch, or identifiable segment to a buyer who continues operation of the business. For the purpose of this subsection, a “separate division, branch, or identifiable segment” shall be deemed to exist if, prior to its sale, the income and expense attributable to such “separate division, branch, or identifiable segment” could be separately ascertained from the books of accounts and records.

(6) Sales by persons who are not defined as “retailers” in section 63-3610, Idaho Code.

(7) Sales of animals by any 4-H club or FFA club held in conjunction with a fair or the western Idaho spring lamb sale.

(8) The sale or purchase of tangible personal property at home yard sales; provided however, that no more than two (2) such home yard sales per individual calendar year shall be exempt.

(c) As used in this section, the term “occasional sale,” when applied to the sale of a motor vehicle, means only:

(1) Sales of motor vehicles between members of a family related within the second degree of consanguinity, unless a sales or use tax was not imposed on the sale of that motor vehicle at the time of purchase, in which situation the sale is taxable.

(2) Sales of motor vehicles that fall within the scope of the transactions detailed in subsection (b)(2) through (b)(5) of this section.

(d) The exemption provided by subsection (b)(1), (b)(4), (b)(6) or (b)(8) of this section shall not apply to the sale, purchase or use of aircraft, as defined in section 21-201, Idaho Code, nor shall it apply to the sale, purchase or use of boats or vessels, as defined in section 67-7003, Idaho Code, nor shall it apply to the sale, purchase or use of snowmobiles, recreational vehicles or off-highway motorbikes, as defined in section 63-3622HH, Idaho Code.

History.

I.C., § 63-3622K, as added by 1984, ch. 239, § 12, p. 570; am. 1988, ch. 157, § 2, p. 284; am. 1988, ch. 367, § 2, p. 1082; am. 1989, ch. 264, § 1, p. 643; am. 1990, ch. 135, § 1, p.

308; am. 1996, ch. 46, § 10, p. 119; am. 1996, ch. 111, § 1, p. 413; am. 1997, ch. 62, § 5, p. 121; am. 1999, ch. 42, § 7, p. 84; am. 2005, ch. 15, § 1, p. 44; am. 2008, ch. 176, § 4, p. 520.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 176, added “or as defined in section 30-6-102, Idaho Code, as

appropriate pursuant to section 30-6-1104, Idaho Code” at the end of paragraph (b)(3)(i).

63-3622M. Liquor sales. — There are exempted from the taxes imposed by this chapter sales of liquor by the state liquor division to a person licensed under the provisions of chapter 9, title 23, Idaho Code, for resale as liquor by-the-drink.

History.

I.C., § 63-3622M, as added by 1984, ch.

239, § 14, p. 570; am. 2009, ch. 23, § 59, p. 53.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 23, substi-

tuted "state liquor division" for "state liquor dispensary."

63-3622N. Prescriptions. — (a) There are exempted from the taxes imposed by this chapter the following when administered or distributed by a practitioner or when purchased by or on behalf of an individual for use by such individual under a prescription or work order of a practitioner:

- (1) Drugs, hypodermic syringes, insulin, insulin syringes, artificial eyes, hearing aids, and hearing aid parts and accessories;
- (2) Drugs and supplies used in hemodialysis and peritoneal dialysis;
- (3) Braces and other orthopedic appliances;
- (4) Dental prostheses and other orthodontic appliances, including fillings;
- (5) Catheters, urinary accessories, colostomy supplies, and other prosthetic devices which shall include, but are not limited to, enteral and parenteral feeding equipment and supplies, (tubing, pumps, containers) catheter devices and supplies, but not including eyeglasses and contact lenses;
- (6) Equipment and devices or chemical reagents which are used to test or monitor blood or urine of a diabetic;
- (7) Other durable medical equipment and devices and related parts and supplies specifically designed for those products which shall include, but are not limited to: oxygen equipment, oxygen cylinders, cylinder transport devices (sheaths, carts), cylinder stands, support devices, regulators, flowmeters, tank wrench, oxygen concentrators, liquid oxygen base dispenser, liquid oxygen portable dispenser, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, oxygen fittings and accessories, respiratory therapy equipment, room humidifiers, aspirators, aerosol compressors (stationary and portable), ultrasonic nebulizers, volume ventilators, respirators and related device supplies, percussors, vibrators, IPPB, circuits, devices and supplies, air oxygen mixers, manual resuscitators, nebulizers, tubing, emergency oxygen delivery units, patient care equipment, physical and occupational therapy items, hospital beds, trapeze bars and bar stand, bed rails, geriatric chairs, lift recliners, bedside commodes, overbed tables, patient lifts, patient lift slings, traction stands and pulleys, shower seating, shower grip bars, raised toilet seats, toilet safety frames, walking canes, quad canes and accessories, walkers, wheeled walkers, walker accessories, I.V. stands, crawlers, posture back supports for seating, posture back supports, wheelchairs, crutches, crutch pads, tips, grips, restraints, standing frame devices and accessories, hand

exercise equipment and putty, specially designed hand utensils, leg weights, paraffin baths, hydrocollators, hydrotherm heating pads, communication aids for physically impaired, specialized seating, desks, work stations, foam wedges, writing and speech aids for the impaired, dressing aids, button loops and zipper aids, grooming aids, dental aids, eating and drinking aids, splints, holders, household aids for the impaired, shampoo trays, reaching aids, foam seating pads, decubitus seating pads, bed pads, fitted stroller, alternating pressure pads and pumps, stethoscope, sphygmomanometers, otoscopes, sitting and sleeping cushions, patient transport devices, boards, stairglides, lifts in home, transcutaneous nerve stimulators, muscle stimulators and bone fracture therapy devices.

(b) The term “practitioner” means a physician, physician assistant, surgeon, podiatrist, chiropractor, dentist, optometrist, psychologist, ophthalmologist, nurse practitioner, denturist, orthodontist, audiologist, hearing aid dealer or fitter or any person licensed by the state under title 54, Idaho Code, to prescribe, administer or distribute items identified in subsection (a) of this section.

(c) The term “drug” means a drug which is:

(1) Defined in section 54-1705, Idaho Code; and

(2) Either:

(i) Listed in a drug compendia which the state board of pharmacy requires to be maintained by Idaho licensed pharmacies; or

(ii) The use of which requires a prescription under state or federal law. The term shall not include articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man.

(d) The term “durable medical equipment” means equipment which:

(1) Can withstand repeated use;

(2) Is primarily and customarily used to serve a medical purpose;

(3) Generally is not useful to a person in the absence of illness or injury; and

(4) Is appropriate for use in the home.

(e) The term “prosthetic device” means a device which replaces a missing part or function of the human body and shall include any supplies physically connected to such devices.

History.

I.C., § 63-3622N, as added by 1990, ch. 42, § 2, p. 65; am. 1992, ch. 78, § 1, p. 218; 1993,

ch. 26, § 4, p. 87; am. 1996, ch. 46, § 12, p. 119; am. 1998, ch. 130, § 1, p. 483; am. 2008, ch. 19, § 1, p. 29.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 19, in the introductory paragraph in subsection (a), deleted “licensed by the state under title 54, Idaho Code, to administer or distribute such items” following “practitioner” and “licensed by the state under title 54, Idaho Code, to prescribe such items” from the end; in subsec-

tion (a)(4), deleted “but not” preceding “including”; and in subsection (b), inserted “physician assistant” and added “or any person licensed by the state under title 54, Idaho Code, to prescribe, administer or distribute items identified in subsection (a) of this section.”

63-36220. Exempt private and public organizations. — (1) There are exempted from the taxes imposed by this chapter:

- (a) Sales to or purchases by hospitals, health-related entities, educational institutions, forest protective associations and canal companies which are nonprofit organizations; and
- (b) Donations to, sales to, and purchases by the Idaho Foodbank Warehouse, Inc.; and
- (c) Donations to, sales to, and purchases by food banks or soup kitchens of food or other tangible personal property used by food banks or soup kitchens in the growing, storage, preparation or service of food, but not including motor vehicles or trailers; and
- (d) Sales of clothes to, donations of clothes to, and purchases of clothes by nonsale clothiers; and
- (e) Sales to or purchases by centers for independent living; and
- (f) Sales to or purchases by the state of Idaho and its agencies and its political subdivisions; and
- (g) Sales to or purchases by volunteer fire departments or licensed emergency medical service agencies; and
- (h) Sales to or purchases by a qualifying senior citizen center; and
- (i) Sales to or purchases by the Blind Services Foundation, Inc.; and
- (j) Donations to, sales to or purchases by the Advocates for Survivors of Domestic Violence and Sexual Assault, Inc., a nonprofit corporation; and
- (k) Sales to or purchases by nonprofit organizations offering free dental clinic services to children; and
- (l) Admissions to and purchases by museums, as defined in subsection (2) of this section.

(2) As used in this section, these words shall have the following meanings:

- (a) “Educational institution” shall mean nonprofit colleges, universities, public charter schools organized pursuant to chapter 52, title 33, Idaho Code, the Idaho digital learning academy established pursuant to chapter 55, title 33, Idaho Code, and other primary and secondary schools, the income of which is devoted solely to education and in which systematic instruction in the usual branches of learning is given. This definition does not include schools primarily teaching business, dancing, dramatics, music, cosmetology, writing, gymnastics, exercise and other special accomplishments nor parent-teacher associations, parent groups, alumni or other auxiliary organizations with purposes related to the educational function of an institution or collective group of institutions.
- (b) “Hospital” shall include nonprofit institutions licensed by the state for the care of ill persons. It shall not extend to nursing homes or similar institutions.
- (c) “Health-related entities” shall mean the Idaho Cystic Fibrosis Foundation, Idaho Epilepsy League, Idaho Lung Association, March of Dimes, American Cancer Society, Camp Rainbow Gold, Mental Health Association, The Arc, The Children’s Home Society of Idaho, American Heart Association, Idaho Ronald McDonald House, United Cerebral Palsy, Arthritis Foundation, Muscular Dystrophy Foundation, National Multi-

ple Sclerosis Society, Rocky Mountain Kidney Association, American Diabetes Association, Easter Seals, Idaho Community Action Agencies, Idaho Primary Care Association and community health centers who are members of the Idaho Primary Care Association, the Idaho Diabetes Youth Programs, Special Olympics Idaho, the Idaho Women's and Children's Alliance, and the Family Services Alliance of Southeast Idaho, together with said entities' local or regional chapters or divisions.

(d) "Canal companies" shall include nonprofit corporations which are incorporated solely for the purpose of operating and maintaining and are engaged solely in operation and maintenance of dams, reservoirs, canals, lateral and drainage ditches, pumps or pumping plants.

(e) "Forest protective associations" shall mean associations whose purpose is the furnishing, operating and maintaining of a protective system for the detection, prevention and suppression of forest or range fires. Forest protective associations shall include only those associations with which the state of Idaho has contracted or become a member of pursuant to chapter 1, title 38, Idaho Code.

(f) "Food banks or soup kitchens" shall mean any nonprofit corporation or association, other than the Idaho Foodbank Warehouse, Inc., one of whose regular activities is the furnishing or providing of food or food products to others without charge.

(g) "Nonsale clothier" shall mean any nonprofit corporation or association, one of whose primary purposes is the furnishing or providing of clothes to others without charge.

(h) "Clothes" shall mean garments in general, designed or intended to be worn by humans and shall include footwear in addition to wearing apparel.

(i) "Center for independent living" shall mean a private, nonprofit, nonresidential organization in which at least fifty-one percent (51%) of the principal governing board, management and staff are individuals with disabilities and that:

(i) Is designed and operated within a local community by individuals with disabilities;

(ii) Provides an array of independent living services and programs; and

(iii) Is cross-disability.

(j) "Political subdivision" means:

(i) A governmental organization which:

1. Embraces a certain territory,

2. Is organized for public advantage and not in the interest of private individuals or classes,

3. Has been delegated functions of government, and

4. Has the statutory power to levy taxes; or

(ii) A public health district created by section 39-408, Idaho Code; or

(iii) A soil conservation district as defined in section 22-2717, Idaho Code; or

(iv) A drainage district created pursuant to chapter 29, title 42, Idaho Code; or

(v) An irrigation district created pursuant to title 43, Idaho Code; or

- (vi) A state grazing board created by section 57-1204, Idaho Code; or
- (vii) A water measurement district created pursuant to section 42-705 or 42-706, Idaho Code; or
- (viii) A ground water management district created pursuant to chapter 51, title 42, Idaho Code.

(k) "Agency of the state of Idaho" shall mean an office or organization created by the constitution or statutes of this state and constituting a component part of the executive, judicial or legislative branch of the government of this state.

(l) "Volunteer fire department" means an entity exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code and which primarily provides fire protection or fire prevention on a not-for-profit basis to surrounding residents.

(m) "Licensed emergency medical service agency" means an emergency medical service (EMS) licensed by the EMS bureau of the department of health and welfare and which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code and which provides emergency medical services on a not-for-profit basis to surrounding residents.

(n) "Qualifying senior citizen center" means an entity exempt from income tax pursuant to section 501(c)(3) of the Internal Revenue Code and which is a community facility for the organization and provision of a broad spectrum of services, which shall include provision of health, including mental health, social, nutritional, and educational services and the provision of facilities for recreational activities for older individuals.

(o) "Museum" means a public institution or an entity exempt from income tax pursuant to section 501(c)(3) of the Internal Revenue Code, which stores, preserves and exhibits objects of art, history, science or other objects of historical, educational or cultural value on a permanent basis in a building, portion of a building or outdoor location and which provides museum services to the public on a regular basis.

(3) The exemption granted by subsection (1)(f) of this section does not include any association or other organization whose members are political subdivisions or state agencies unless the organization is expressly created under the joint powers provision of sections 67-2328 through 67-2333, Idaho Code.

(4) The exemptions granted by subsection (1) of this section do not include the use of tangible personal property by a contractor used to improve real property of an exempt entity when such use is within the definition provided by section 63-3615(b), Idaho Code, whether the use tax liability is included in a contract total or stated separately in a contract.

(5) There is exempted from the taxes imposed in this chapter the renting of a place to sleep to an individual by the Idaho Ronald McDonald House.

History.

I.C., § 63-36220, as added by 1984, ch. 239, § 16, p. 570; am. 1987, ch. 18, § 6, p. 23; am. 1990, ch. 64, § 1, p. 143; am. 1990, ch. 74, § 1, p. 157; am. 1990, ch. 134, § 1, p. 307; am. 1991, ch. 118, § 1, p. 247; am. 1992, ch. 32,

§ 1, p. 218; am. 1993, ch. 7, § 2, p. 23; 1993, ch. 402, § 1, p. 1468; am. 1995, ch. 54, § 4, p. 122; am. 1995, ch. 219, § 3, p. 762; am. 1997, ch. 199, § 1, p. 574; am. 1997, ch. 350, § 1, p. 1036; am. 1998, ch. 182, § 1, p. 669; am. 1999, ch. 42, § 8, p. 84; am. 1999, ch. 244, § 7, p.

623; am. 1999, ch. 279, § 1, p. 694; am. 1999, ch. 287, § 1, p. 711; am. 2000, ch. 309, § 1, p. 1045; am. 2000, ch. 348, § 1, p. 1173; am. 2000, ch. 425, § 1, p. 1376; am. 2002, ch. 90, § 1, p. 225; am. 2002, ch. 120, § 1, p. 335; am. 2002, ch. 255, § 1, p. 733; am. 2003, ch. 16,

§ 17, p. 48; am. 2004, ch. 115, § 1, p. 387; am. 2006, ch. 89, § 1, p. 261; am. 2006, ch. 211, § 1, p. 640; am. 2006, ch. 316, § 1, p. 983; am. 2007, ch. 90, § 26, p. 246; am. 2008, ch. 172, § 1, p. 472; am. 2014, ch. 114, § 1, p. 325.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 172, inserted “the Idaho digital learning academy established pursuant to chapter 55, title 33, Idaho Code” in paragraph (2)(a).

The 2014 amendment, by ch. 114, inserted “Camp Rainbow Gold” near the beginning of subsection (2)(c).

Federal References.

Section 501(c)(3) of the Internal Revenue Code, referred to in paragraph (2)(I), is codified as 26 U.S.C.S. § 501(c)(3).

Effective Dates.

Section 2 of S.L. 2014, ch. 114 declared an emergency. Approved March 18, 2014.

63-3622R. Motor vehicles, used manufactured homes, vessels, all-terrain vehicles, trailers, off-road motorcycles, snowmobiles and glider kits. — There are exempted from the taxes imposed by this chapter:

(a) Sales to nonresidents of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), motorcycles intended for off-road use and snowmobiles, for use outside of this state even though delivery be made within this state, but only when:

(1) The motor vehicles, vessels, ATVs, motorcycles intended for off-road use, snowmobiles or trailers will be taken from the point of delivery in this state directly to a point outside this state; and

(2) The motor vehicles, vessels, ATVs, motorcycles intended for off-road use, snowmobiles and trailers will be registered immediately under the laws of another state, will be titled in another state if required to be titled in that state, will not be used in this state more than sixty (60) days in any twelve (12) month period, and will not be required to be titled under the laws of this state.

(3) For the purpose of this subsection (a), the term “all-terrain vehicle” or “ATV” means all-terrain vehicle or ATV as defined in section 49-102, Idaho Code.

(4) For the purpose of this section, the term “vessel” means any boat intended to carry one (1) or more persons upon the water which is either:

(i) Sold together with a motor, or

(ii) Eleven (11) feet in length or more, but shall not include canoes, kayaks or inflatable boats, unless such canoes, kayaks or inflatable boats are sold together with a motor.

(b) Sale of used manufactured homes, whether or not such used manufactured homes are sold for use outside this state, and whether or not such used manufactured homes are sold by a dealer. Every manufactured home sale after its sale as a “new manufactured home,” as defined in section 63-3606, Idaho Code, is a sale as a used manufactured home.

(c) Sale or lease of motor vehicles with a maximum gross registered weight over twenty-six thousand (26,000) pounds, which shall be immediately registered under the international registration plan, whether or not base plated in Idaho, and the sale or lease of trailers which are part of a fleet

of vehicles registered under the international registration plan when such vehicles and trailers are substantially used in interstate commerce. If such a motor vehicle or trailer is not substantially used in interstate commerce during any four (4) fiscal year quarters beginning July 1 and ending June 30 of each year under the international registration plan, it shall be deemed used in Idaho and subject to the use tax under section 63-3621, Idaho Code. For the purpose of this subsection, “substantially used in interstate commerce” means that the vehicles or trailers will be part of a fleet with a minimum of ten percent (10%) of the miles operated by the fleet accrued outside of Idaho in any four (4) fiscal year quarters beginning July 1 and ending June 30 of each year under the international registration plan.

(d) The sale or purchase of a glider kit when the glider kit will be used to assemble a glider kit vehicle as defined in section 49-123, Idaho Code, which will be immediately registered under a plan defined in subsection (c) of this section, provided that if the glider kit vehicle is not substantially used in interstate commerce as defined in subsection (c) of this section during any registration period, it shall be subject to the use tax under section 63-3621, Idaho Code.

(e) The use or other consumption of a motor vehicle temporarily donated to a driver’s education program sponsored by a nonprofit educational institution as defined in section 63-3622O, Idaho Code.

History.

I.C., § 63-3622R, as added by 1984, ch. 239, § 19, p. 570; am. 1987, ch. 18, § 5, p. 23; am. 1987, ch. 326, § 3, p. 682; am. 1989, ch. 309, § 1, p. 768; am. 1990, ch. 431, § 3, p. 1195; 1993, ch. 26, § 5, p. 87; am. 1995, ch. 54, § 5,

p. 122; am. 1999, ch. 42, § 9, p. 84; am. 2001, ch. 354, § 1, p. 1241; am. 2002, ch. 60, § 1, p. 128; am. 2003, ch. 9, § 2, p. 19; am. 2003, ch. 87, § 2, p. 265; am. 2006, ch. 237, § 1, p. 721; am. 2007, ch. 111, § 2, p. 318; am. 2008, ch. 409, § 9, p. 1135; am. 2012, ch. 3, § 1, p. 5.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 409, rewrote subsection (3), which formerly read: “For the purpose of this subsection (a), the term ‘all-terrain vehicle’ or ‘ATV’ means any recreational vehicle with three (3) or more tires, weighing under eight hundred fifty (850) pounds, forty-eight (48) inches or less in width, having a wheelbase of sixty-one (61)

inches or less, traveling on low-pressure tires of ten (10) psi or less.”

The 2012 amendment, by ch. 3, in subsection (c), substituted “four (4) fiscal year quarters beginning July 1 and ending June 30 of each year” for “annual registration period” near the beginning of the second sentence and near the end of the last sentence.

63-3622FF. Purchases made with SNAP benefit cards. — Purchases of food made with benefits provided under the federal supplemental nutrition assistance program (SNAP) are exempt from the taxes imposed by chapter 36, title 63, Idaho Code, and are exempt from the taxes that may be imposed on such purchases under the provisions of sections 50-1043 through 50-1049, Idaho Code.

History.

I.C., § 63-3622FF, as added by 1987, ch.

336, § 1, p. 708; am. 2010, ch. 81, § 1, p. 161; am. 2013, ch. 34, § 1, p. 74.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 81, in the section heading, added "Federal food, conservation and energy act coupons"; and in text, deleted "Commencing October 1, 1987" from the beginning, and inserted "and purchases of food made with coupons issued under the federal food, conservation, and energy act of 2008 (P. L. 110-246, 122 Stat. 1651 (2008), also known as the Farm Bill of 2008)."

The 2013 amendment, by ch. 34, rewrote the section, which formerly read: "**Purchases made with federal food stamps — Federal food, conservation and energy act coupons.** Purchases of food made with coupons issued under the federal food stamp act of 1977 and the food security act of 1985, and

purchases of food made with coupons issued under the federal food, conservation, and energy act of 2008 (P.L. 110-246, 122 Stat. 1651 (2008), also known as the Farm Bill of 2008), are exempt from the taxes imposed by chapter 36, title 63, Idaho Code, and are exempt from the taxes that may be imposed on such purchases under the provisions of sections 50-1043 through 50-1049, Idaho Code."

Federal References.

For more on the federal supplemental nutrition program, see <http://www.fns.usda.gov/snap/>.

Effective Dates.

Section 2 of S.L. 2010, ch. 81 declared an emergency. Approved March 25, 2010.

63-3622GG. Aircraft. [Null and void, effective June 30, 2016.] — There is exempted from the taxes imposed by this chapter:

(1) The sale, lease, purchase, or use of aircraft primarily used to provide passenger or freight services for hire as a common carrier only if:

(a) The person operates the aircraft under the authority of the laws of this state, the United States or any foreign government; and

(b) The aircraft is used to provide services indiscriminately to the public; and

(c) The aircraft itself transports the person or property from one (1) location on the ground or water to another.

(2) The sale, lease, purchase or use of aircraft primarily used for air ambulance services.

(3) The sale, lease or purchase of aircraft for use outside this state by nonresidents, even though delivery be made within this state, but only when:

(a) The aircraft will be taken from the point of delivery to a point outside this state;

(b) The aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period.

(4) Repair and replacement materials and parts installed in or affixed or applied to, or sold, leased or purchased to be installed in or affixed or applied to, aircraft in connection with the remodeling, repair or maintenance of aircraft described under subsections (1) and (2) of this section and industry standard, federal aviation administration (FAA) approved materials, parts and components installed on non-resident privately owned aircraft by qualified employees of an FAA approved Idaho repair station are exempt. Tools and equipment utilized in performing such remodeling, repair or maintenance are not exempt.

History.

I.C., § 63-3622GG as added by 1988, ch. 352, § 2, p. 1052; am. 1994, ch. 44, § 1, p. 72;

am. 2001, ch. 98, § 1, p. 247; am. 2003, ch. 9, § 3, p. 19; am. 2009, ch. 91, § 2, p. 265; am. 2012, ch. 47, § 1, p. 142.

STATUTORY NOTES

Repealed effective June 30, 2016. Section 2 of S.L. 2012, ch. 47 makes this section null, void and of no force and effect on and after June 30, 2016.

Amendments.

The 2009 amendment, by ch. 91, rewrote the section, adding subsections (2) and (4); limiting the sales and use tax exemption for aircraft used to provide passenger or freight services for hire subject to specified qualifications.

The 2012 amendment, by ch. 47, added “and industry standard, federal aviation administration (FAA) approved materials, parts and components installed on non-resident privately owned aircraft by qualified employees of an FAA approved Idaho repair station” near the end of the first sentence in subsection (4).

Effective Dates.

Section 2 of S.L. 2012, ch. 47 declared an emergency. Approved March 9, 2012.

63-3622HH. Production exemption shall not apply to sales regarding recreation-related vehicles. — (1) Notwithstanding any other provision of law to the contrary, the production exemption provided in section 63-3622D, Idaho Code, shall not apply to sales of or repairs to snowmobiles, off-highway motorbikes, recreational vehicles, or motorcycles and all sales of snowmobiles, off-highway motorbikes, recreational vehicles or motorcycles are subject to the sales and use taxes imposed by this chapter. All repairs to snowmobiles, off-highway motorbikes, recreational vehicles or motorcycles are subject to the sales and use taxes imposed by this chapter.

(2) As used in this section, the term “snowmobile” means any self-propelled vehicle under one thousand (1,000) pounds unladen gross weight designed primarily for travel on snow or ice or over natural terrain which may be steered by tracks, skis or runners, and which is not otherwise registered or licensed under the laws of the state of Idaho.

(3) As used in this section, the term “off-highway motorbike” means any self-propelled two (2), three (3), four (4) or five (5) wheeled motorcycle or motor-driven cycle, excluding tractor, designed for or capable of traveling off developed roadways and highways and also referred to as trailbikes, enduro bikes, trail bikes, motorcross bikes or dual purpose motorcycles.

(4) As used in this section, the term “recreational vehicle” means a motor home, travel trailer, truck camper or camping trailer, with or without motive power, designed for human habitation for recreational or emergency occupancy. The term recreational vehicle shall not include pickup hoods, shells, or canopies designed, created or modified for occupational usage. School buses or van type vehicles which are converted to recreational use, are defined as recreational vehicles. Specific classes of recreational vehicles are defined as follows:

(a) The term “motor home” shall mean a vehicular unit designed to provide temporary living quarters, built into an integral part of or permanently attached to a self-propelled motor vehicle chassis. The vehicle must contain permanently installed independent life support systems which meet the American national standards institute (ANSI) A119.7 standard for recreational vehicles, and provide at least four (4) of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating and/or air conditioning, a portable water supply system,

including a faucet and sink, separate 110-125 volt electrical power supply and/or LP-gas supply.

(b) The term “travel trailer” shall mean a vehicular unit, mounted on wheels designed to provide temporary living quarters for recreational, camping, travel or emergency use and of such size or weight as not to require special highway movement permits when towed by a motorized vehicle.

(c) The term “fifth wheel trailer” shall mean a vehicular unit equipped in the same manner as a travel trailer but constructed with a raised forward section that allows a bi-level floor plan. This style is designed to be towed by a vehicle equipped with a device known as a fifth-wheel hitch, which is typically installed in the bed of a pickup truck.

(d) The term “park trailer” shall mean a trailer designed to be towed by a motorized vehicle, and of such size and weight as not to require a special highway movement permit. It is designed for seasonal or temporary living quarters and may be connected to utilities necessary for operation of installed fixtures and appliances. It is built on a single permanent chassis and constructed to permit set up by persons without special skills.

(e) The term “fold down camping trailer” shall mean a vehicular portable unit mounted on wheels and constructed with collapsible partial side walls, which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters, for recreational, camping or travel use.

(f) The term “truck camper” shall mean a portable unit constructed to provide temporary living quarters for recreational, travel or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pickup truck, and containing at least one (1) of the following facilities: stove; refrigerator or icebox; self-contained toilet; heater or air conditioner; potable water supply including a faucet and sink; separate 110-125 volt electrical power supply; or LP-gas supply.

(5) As used in this section, the term “motorcycle” means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor. A motorcycle also is every motor scooter or motorized bicycle having an engine with less than one hundred fifty (150) cubic centimeters displacement or with five (5) brake horsepower or less.

(6) As used in this section, the term “repairs” shall include only the costs of parts, but not labor, utilized on the snowmobile, off-highway motorbike, recreational vehicle or motorcycle.

History.

I.C., § 63-3622HH, as added by 1988, ch.

367, § 1, p. 1082; am. 1989, ch. 22, § 1, p. 25; am. 2008, ch. 106, § 6, p. 302.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 106, added the language beginning “and containing at least one (1) of the following facilities” in subsection (4)(f).

Effective Dates.

Section 7 of S.L. 2008, ch. 106 provided “This act shall be in full force and effect on and after January 1, 2009.”

63-3622QQ. Equipment used in alternative method of generation of electricity. [Null and void.]

Null and void, pursuant to S.L. 2005, ch. 355, § 2, effective July 1, 2011.

History.

355, § 1, p. 1123; am. 2008, ch. 227, § 7, p.

I.C., § 63-3622QQ, as added by 2005, ch. 697.

63-3622TT. Media production project tax rebate. [Effective until July 1, 2016.] — (1) An eligible media production company which purchases tangible personal property used directly in a media production project and which makes qualifying media production expenditures may qualify for a rebate of sales or use taxes paid on such purchases if the purchaser develops, with such tangible personal property or qualifying media production project expenditures in Idaho, the production in Idaho of a media production project and if the purchase or use of such tangible personal property is subject to the sales and use tax. To be eligible for the rebate pursuant to this section, a media production company shall submit to the department of commerce information required by the director of the department of commerce to demonstrate conformity with the requirements of this section and shall have expended or will expend a minimum of two hundred thousand dollars (\$200,000) on qualifying media production project expenses in Idaho within a consecutive thirty-six (36) month period for each media production project. Application for the rebate shall be made within thirty-six (36) months of the expenditure qualifying for the rebate. The department of commerce shall determine eligibility of the company and shall report this information to the state tax commission in a manner and at a time upon which the department of commerce and the tax commission shall agree. The department of commerce may charge an application fee not in excess of five hundred dollars (\$500) for a media production company's application to be qualified for the sales tax rebate pursuant to this section.

(2) To receive the rebate pursuant to this section, the media production company shall apply to the state tax commission on forms and in the manner the commission requires. The application shall include a certification of the amount of expenditures made in Idaho with respect to the purchase of tangible personal property by the media production company by the director of the department of commerce or the director's designee. The rebate shall be paid within sixty (60) days from the date the tax commission receives a qualified application. If the rebate is not paid within that period, the amount owed to the taxpayer shall accrue interest at the rate provided in section 63-3045, Idaho Code.

(3) As used in this section:

(a) "Media production project" is defined as the production of a single project through a variety of techniques and media including live action camera work, animation, computer-generated imagery or other recorded work during the process of preproduction, production and postproduction, that is intended to be exhibited in theaters, licensed for exhibition on television or cable stations or networks, licensed for or produced for sale or rental to home or commercial viewing markets or a future viewing or

listening medium. Products of a media production project include feature films, videos, television series or movies, industrials and education programs or shows, video or computer games, and documentaries, but shall not include production of news and athletic event programming, political advertisements, family or personal productions, filming of live staged events to which tickets are sold or any material of an indecent or obscene nature as provided in chapter 41, title 18, Idaho Code. "Media production project" includes "preproduction," "production," and "postproduction."

(b) "Postproduction" means the final stage in a media production project after principal photography, including editing, the addition of sound/visual effects and musical scoring, mixing and dubbing and distributing.

(c) "Preproduction" means the planning stage in a media production project after the project is financed and before principal photography or actual shooting commences, including script treatment and editing/rewriting, scheduling, set design and construction, casting, budgeting and financial planning, and scouting or selection of locations.

(d) "Production" means the general process of putting a media production project together, including casting, set construction, principal photography and shooting.

(e) "Qualifying media production project expenditures" in Idaho includes, but is not limited to, wages from eleven dollars (\$11.00) per hour to one hundred twenty-five dollars (\$125) per hour, fringe benefits, commissions or fees and per diem expenses for labor paid in Idaho; contract labor paid in Idaho; equipment rentals and purchases during preproduction, production and postproduction such as grip, lighting, editing, camera, communication and computers; film, videotape stock or digital recording medium and processing and transfer costs; expendables such as gaffer's tape or gel; wardrobe and costuming; makeup and hairdressing supplies; set construction and set decoration materials, prop rentals and purchases, including lumber and construction materials, tools and equipment; stage, location site and office space rentals, equipment and expendables; vehicle, truck, boat and aircraft rentals, leases and purchases; food purchased for cast and crew; airfare or other travel purchased through an Idaho based travel agency; insurance and completion bond coverage purchased through an Idaho based agency; lodging expenses for hotels, motels, apartments and houses; motor vehicle expenses, including gas, oil, servicing and reimbursed mileage; laundry and dry cleaning; and shipping services.

(4) Any rebate paid shall be subject to recapture by the commission at one hundred percent (100%) in the event that the tax incentive criteria are not met at the project site during the project period or in the event that the media production company did not otherwise qualify. Any recapture amount due under this section shall be a deficiency in tax for the period in which the disqualification first occurs for purposes of section 63-3629, Idaho Code, and may be enforced and collected in the manner provided by the Idaho sales tax act in which the disqualification first occurs for purposes of section 63-3629, Idaho Code, and may be enforced and collected in the manner provided by the Idaho sales tax act.

History.

I.C., § 63-3622TT, as added by 2006, ch.

219, § 1, p. 654; am. 2007, ch. 360, § 24, p. 1061.

STATUTORY NOTES

Repealed effective July 1, 2016. Section 2 of S.L. 2006, ch. 219, as amended by S.L. 2011, ch. 226, § 1 provides: "The provisions of this act [enacting § 63-3622TT] shall be null, void and of no force and effect on and after July 1, 2016. By January 2 of each year, the Department of Commerce and Labor shall

provide an annual report of the results of all media production projects that have applied to participate in the media production project tax rebate contained in Section 63-3622TT, Idaho Code, to the Governor and the Legislature."

63-3622UU. Personal property tax on rentals. — The taxes imposed by this chapter do not apply to charges for personal property tax added to the rent paid for leases of tangible personal property. This exemption applies if:

(1) The lessor separately states the charge for property tax to the lessee; and

(2) The amount charged to the lessee is not more than the property tax actually paid by the lessor; and

(3) The lease agreement is for an initial period of one (1) year or longer.

History.

I.C., § 63-3622UU, as added by 2008, ch. 92, § 1, p. 258.

63-3626. Refunds, limitations, interest.**RESEARCH REFERENCES**

A.L.R. — Construction and operation of statutory time limit for filing claim for state tax refund. 14 A.L.R.6th 119.

63-3638. Sales tax — Distribution. — All moneys collected under this chapter, except as may otherwise be required in sections 63-3203 and 63-3709, Idaho Code, shall be distributed by the state tax commission as follows:

(1) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the state tax commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(2) Five million dollars (\$5,000,000) per year is continuously appropriated and shall be distributed to the permanent building fund, provided by section 57-1108, Idaho Code.

(3) Four million eight hundred thousand dollars (\$4,800,000) per year is continuously appropriated and shall be distributed to the water pollution control account established by section 39-3628, Idaho Code.

(4) An amount equal to the sum required to be certified by the chairman of the Idaho housing and finance association to the state tax commission pursuant to section 67-6211, Idaho Code, in each year is continuously appropriated and shall be paid to any capital reserve fund, established by

the Idaho housing and finance association pursuant to section 67-6211, Idaho Code. Such amounts, if any, as may be appropriated hereunder to the capital reserve fund of the Idaho housing and finance association shall be repaid for distribution under the provisions of this section, subject to the provisions of section 67-6215, Idaho Code, by the Idaho housing and finance association, as soon as possible, from any moneys available therefor and in excess of the amounts which the association determines will keep it self-supporting.

(5) An amount equal to the sum required by the provisions of sections 63-709 and 63-717, Idaho Code, after allowance for the amount appropriated by section 63-718(3), Idaho Code, is continuously appropriated and shall be paid as provided by sections 63-709 and 63-717, Idaho Code.

(6) An amount required by the provisions of chapter 53, title 33, Idaho Code.

(7) An amount required by the provisions of chapter 87, title 67, Idaho Code.

(8) For fiscal year 2011, and each fiscal year thereafter, four million one hundred thousand dollars (\$4,100,000), of which two million two hundred thousand dollars (\$2,200,000) shall be distributed to each of the forty-four (44) counties in equal amounts, and one million nine hundred thousand dollars (\$1,900,000) of which shall be distributed to the forty-four (44) counties in the proportion that the population of the county bears to the population of the state. For fiscal year 2012, and for each fiscal year thereafter, the amount distributed pursuant to this subsection, shall be adjusted annually by the state tax commission in accordance with the consumer price index for all urban consumers (CPI-U) as published by the U.S. department of labor, bureau of labor statistics, but in no fiscal year shall the total amount allocated for counties under this subsection, be less than four million one hundred thousand dollars (\$4,100,000). Any increase resulting from the adjustment required in this section shall be distributed to each county in the proportion that the population of the county bears to the population of the state. Each county shall establish a special election fund to which shall be deposited all revenues received from the distribution pursuant to this subsection. All such revenues shall be used exclusively to defray the costs associated with conducting elections as required of county clerks by the provisions of section 34-1401, Idaho Code.

(9) One dollar (\$1.00) on each application for certificate of title or initial application for registration of a motor vehicle, snowmobile, all-terrain vehicle or other vehicle processed by the county assessor or the Idaho transportation department excepting those applications in which any sales or use taxes due have been previously collected by a retailer, shall be a fee for the services of the assessor of the county or the Idaho transportation department in collecting such taxes, and shall be paid into the current expense fund of the county or state highway account established in section 40-702, Idaho Code.

(10) Eleven and five-tenths percent (11.5%) is continuously appropriated and shall be distributed to the revenue sharing account which is created in the state treasury, and the moneys in the revenue sharing account will be

paid in installments each calendar quarter by the state tax commission as follows:

(a) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various cities as follows:

(i) Fifty percent (50%) of such amount shall be paid to the various cities, and each city shall be entitled to an amount in the proportion that the population of that city bears to the population of all cities within the state; and

(ii) Fifty percent (50%) of such amount shall be paid to the various cities, and each city shall be entitled to an amount in the proportion that the preceding year's market value for assessment purposes for that city bears to the preceding year's market value for assessment purposes for all cities within the state.

(b) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various counties as follows:

(i) One million three hundred twenty thousand dollars (\$1,320,000) annually shall be distributed one forty-fourth ($1/44$) to each of the various counties; and

(ii) The balance of such amount shall be paid to the various counties, and each county shall be entitled to an amount in the proportion that the population of that county bears to the population of the state;

(c) Thirty-five and nine-tenths percent (35.9%) of the amount appropriated in this subsection shall be paid to the several counties for distribution to the cities and counties as follows:

(i) Each city and county which received a payment under the provisions of section 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.

(ii) If the dollar amount of money available under this subsection (10)(c) in any quarter does not equal the amount paid in the fourth quarter of calendar year 1999, each city's and county's payment shall be reduced proportionately.

(iii) If the dollar amount of money available under this subsection (10)(c) in any quarter exceeds the amount paid in the fourth quarter of calendar year 1999, each city and county shall be entitled to a proportionately increased payment, but such increase shall not exceed one hundred five percent (105%) of the total payment made in the fourth quarter of calendar year 1999.

(iv) If the dollar amount of money available under this subsection (10)(c) in any quarter exceeds one hundred five percent (105%) of the total payment made in the fourth quarter of calendar year 1999, any amount over and above such one hundred five percent (105%) shall be paid fifty percent (50%) to the various cities in the proportion that the population of the city bears to the population of all cities within the state, and fifty percent (50%) to the various counties in the proportion that the population of a county bears to the population of the state; and

(d) Seven and seven-tenths percent (7.7%) of the amount appropriated in this subsection shall be paid to the several counties for distribution to special purpose taxing districts as follows:

(i) Each such district which received a payment under the provisions of section 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.

(ii) If the dollar amount of money available under this subsection (10)(d) in any quarter does not equal the amount paid in the fourth quarter of calendar year 1999, each special purpose taxing district's payment shall be reduced proportionately.

(iii) If the dollar amount of money available under this subsection (10)(d) in any quarter exceeds the amount distributed under paragraph (i) of this subsection (10)(d), each special purpose taxing district shall be entitled to a share of the excess based on the proportion each such district's current property tax budget bears to the sum of the current property tax budgets of all such districts in the state. The state tax commission shall calculate district current property tax budgets to include any unrecovered foregone amounts as determined under section 63-802(1)(e), Idaho Code. When a special purpose taxing district is situated in more than one (1) county, the state tax commission shall determine the portion attributable to the special purpose taxing district from each county in which it is situated.

(iv) If special purpose taxing districts are consolidated, the resulting district is entitled to a base amount equal to the sum of the base amounts which were received in the last calendar quarter by each district prior to the consolidation.

(v) If a special purpose taxing district is dissolved or disincorporated, the state tax commission shall continuously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or disincorporation. The board of county commissioners shall determine any redistribution of moneys so received.

(vi) Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection (10)(d).

(vii) For purposes of this subsection (10)(d), a special purpose taxing district is any taxing district which is not a city, a county or a school district.

(11) Amounts calculated in accordance with section 2, chapter 356, laws of 2001, for annual distribution to counties and other taxing districts beginning in October 2001 for replacement of property tax on farm machinery and equipment exempted pursuant to section 63-602EE, Idaho Code. For nonschool districts, the state tax commission shall distribute one-fourth (1/4) of this amount certified quarterly to each county. For school districts, the state tax commission shall distribute one-fourth (1/4) of the amount certified quarterly to each school district. For nonschool districts, the county auditor shall distribute to each district within thirty (30) calendar days from receipt of moneys from the state tax commission. Moneys received by each taxing district for replacement shall be utilized in the same manner and in the same proportions as revenues from property taxation. The moneys remitted to the county treasurer for replacement of property exempt from

taxation pursuant to section 63-602EE, Idaho Code, may be considered by the counties and other taxing districts and budgeted at the same time, in the same manner and in the same year as revenues from taxation on personal property which these moneys replace. If taxing districts are consolidated, the resulting district is entitled to an amount equal to the sum of the amounts which were received in the last calendar quarter by each district pursuant to this subsection prior to the consolidation. If a taxing district is dissolved or disincorporated, the state tax commission shall continuously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or disincorporation. The board of county commissioners shall determine any redistribution of moneys so received. If a taxing district annexes territory, the distribution of moneys received pursuant to this subsection shall be unaffected. Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection. School districts shall receive an amount determined by multiplying the sum of the year 2000 school district levy minus .004 times the market value on December 31, 2000, in the district of the property exempt from taxation pursuant to section 63-602EE, Idaho Code, provided that the result of these calculations shall not be less than zero (0). The result of these school district calculations shall be further increased by six percent (6%). For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this section as property tax replacement for property exempt from taxation pursuant to section 63-602EE, Idaho Code, shall be treated as property tax revenues.

(12) Amounts necessary to pay refunds as provided in section 63-3641, Idaho Code, to a developer of a retail complex shall be remitted to the demonstration pilot project fund created in section 63-3641, Idaho Code.

(13) Amounts calculated in accordance with subsection (4) of section 63-602KK, Idaho Code, for annual distribution to counties and other taxing districts for replacement of property tax on personal property tax exemptions pursuant to subsection (2) of section 63-602KK, Idaho Code, which amounts are continuously appropriated unless the legislature enacts a different appropriation for a particular fiscal year. For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this section as property tax replacement for property exempt from taxation pursuant to section 63-602KK, Idaho Code, shall be treated as property tax revenues. If taxing districts are consolidated, the resulting district is entitled to an amount equal to the sum of the amounts that were received in the last calendar year by each district pursuant to this subsection prior to the consolidation. If a taxing district or revenue allocation area annexes territory, the distribution of moneys received pursuant to this subsection shall be unaffected. Taxing districts and revenue allocation areas formed after January 1, 2013, are not entitled to a payment under the provisions of this subsection.

(14) Amounts collected from purchasers and paid to the state of Idaho by retailers that are not engaged in business in this state and which retailer would not have been required to collect the sales tax, less amounts otherwise distributed in subsections (1) and (10) of this section, shall be

distributed to the tax relief fund created in section 57-811, Idaho Code. The state tax commission will determine the amounts to be distributed under this subsection.

(15) Any moneys remaining over and above those necessary to meet and reserve for payments under other subsections of this section shall be distributed to the general fund.

History.

1965, ch. 195, § 38, p. 408; am. 1967, ch. 115, § 11, p. 222; am. 1967, ch. 116, § 3, p. 229; am. 1967, ch. 377, § 2, p. 1109; am. 1970, ch. 183, § 1, p. 530; am. 1971, ch. 14, § 1, p. 25; am. 1975, ch. 155, § 1, p. 398; am. 1976, ch. 280, § 1, p. 959; am. 1977, ch. 325, § 1, p. 911; am. 1978, ch. 291, § 4, p. 713; am. 1979, ch. 254, § 14, p. 661; am. 1980, ch. 179, § 15, p. 382; am. 1980, ch. 349, § 1, p. 884; am. 1981, ch. 326, § 1, p. 683; am. 1984, ch. 287, § 5, p. 670; am. 1986, ch. 73, § 18, p. 201; am. 1987, ch. 31, § 4, p. 47; am. 1987, ch. 92, § 2, p. 173; am. 1994, ch. 111, § 5, p. 244; am. 1995, ch. 26, § 3, p. 33; am. 1996, ch. 253, § 32, p. 802; am. 1996, ch. 322, § 68, p. 1029;

am. 1997, ch. 117, § 40, p. 298; am. 1997, ch. 242, § 2, p. 703; am. 1998, ch. 362, § 2, p. 1133; am. 1999, ch. 42, § 15, p. 84; am. 1999, ch. 328, § 2, p. 840; am. 2000, ch. 49, § 2, p. 92; am. 2000, ch. 207, § 2, p. 527; am. 2001, ch. 55, § 1, p. 97; am. 2001, ch. 130, § 3, p. 451; am. 2003, ch. 318, § 4, p. 870; am. 2004, ch. 104, § 2, p. 369; am. 2005, ch. 18, §§ 1, 2, p. 49; am. 2006, ch. 234, § 2, p. 694; am. 2006 (1st E.S.), ch. 1, § 20; am. 2007, ch. 172, § 2, p. 506; am. 2008, ch. 400, § 3, p. 1094; am. 2009, ch. 62, § 1, p. 168; am. 2009, ch. 341, § 145, p. 993; am. 2013, ch. 20, § 1, p. 30; am. 2013, ch. 243, § 4, p. 581; am. 2014, ch. 339, § 2, p. 854; am. 2014, ch. 357, § 7, p. 886.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 400, added subsection (12) and redesignated former subsection (12) as subsection (13).

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 62, updated the section reference in subsection (3); and in subsection (11), deleted "subsection (3) of" preceding "section 63-3641," "commercial" following "retail," "whose stores sell tangible personal property or taxable services subject to the sales and use tax up to an aggregate total of thirty-five million dollars (\$35,000,000) per project" following "complex," and "and shall be specific to and accounted for by each project" from the end.

The 2009 amendment, by ch. 341, updated the section reference in subsection (3); and added subsection (8), redesignating the subsequent subsections accordingly.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 20, added the third sentence in subsection (8).

The 2013 amendment, by ch. 243, added the last sentence in subsection (13).

This section was amended by two 2014 acts which appear to be compatible and have been compiled together.

The 2014 amendment, by ch. 339, inserted present subsection (14) and redesignated former subsection (14) as subsection (15).

The 2014 amendment, by ch. 357, added the last three sentences in subsection (13).

Compiler's Notes.

The references to section 63-3638(e) in paragraphs (10)(c)(i) and (10)(d)(i) are to that section as it read in 1999. See S.L. 1999, ch. 42, § 15 and S.L. 1999, ch. 328, § 2.

S.L. 2014, Chapter 357 became law without the signature of the governor.

Effective Dates.

Section 10 of S.L. 2008, ch. 400 provided that the act should take effect on and after January 1, 2009.

Section 4 of S.L. 2009, ch. 62 provided that the act should take effect on and after March 31, 2009.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2010.

Section 2 of S.L. 2013, ch. 10 declared an emergency. Approved February 26, 2013.

Section 5 of S.L. 2013, ch. 243 declared an emergency and made this section retroactive to January 1, 2013. Approved April 3, 2013.

Section 8 of S.L. 2014, ch. 357 declared an emergency and made this section retroactive to January 1, 2014.

63-3638A. Sales tax on liquor to be paid to liquor account. — Notwithstanding the provisions of section 63-3638, Idaho Code, the sales tax

collected on the retail sale of liquor and all other merchandise by or on behalf of the director of the state liquor division shall be credited directly to the liquor account, and shall not be or become a part of the sales tax account.

History.

I.C., § 63-3638A, as added by 1982, ch. 255, § 12, p. 653; am. 1987, ch. 260, § 8, p. 545;

am. 2006, ch. 18, § 7, p. 68; am. 2009, ch. 23, § 60, p. 53.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 23, substituted “director of the state liquor division” for

“superintendent of the state liquor dispensary.”

63-3641. Rebate of sales taxes collected. — (1) As provided in and subject to the limitations of this section, a developer of a retail complex shall receive a rebate of sales taxes collected and remitted to the state tax commission under this chapter by qualified retailers within the retail complex to reimburse the developer for project expenses incurred for the installation of approved transportation improvements.

(2) As used in this section:

(a) “Approved transportation improvements” means a highway project the cost of which is in excess of six million dollars (\$6,000,000) for the installation of an interchange from an interstate highway or expended on the improvement of a highway as defined in section 40-109(5), Idaho Code. To qualify as an approved highway improvement the developer of a retail complex must enter into an agreement with the Idaho transportation board and/or political subdivision. An approved highway improvement shall include those costs directly associated with the highway project but shall not include any improvement not within the right-of-way of the proposed public highway improvement, improvements not specifically authorized in the agreement entered into, or developer financed improvements required by state or local agencies as part of the permitting and development process not within the public highway right-of-way.

(b) “Political subdivision” means a city, county or highway district that receives highway funding pursuant to section 40-709, Idaho Code.

(c) “Qualified retailer” means a specific location within a retail complex operated by a retailer in regard to which the retailer:

(i) Has obtained a separate seller’s permit pursuant to section 63-3620, Idaho Code, applicable only to that location and has collected sales or use taxes in regard to retail sales made at that location and has remitted all such taxes to the state tax commission with returns related to that permit;

(ii) Has been identified in the manner required by rules of the state tax commission as associated with the specific retail complex; and

(iii) Did not directly or by any related party (as defined in section 63-3615A(2), Idaho Code) operate a retail business in the same location before construction of the retail complex.

(d) “Retail complex” means:

- (i) One (1) or more buildings in a single location constructed by a developer applying for a rebate under this section;
 - (ii) Facilities reasonably related to the buildings, such as parking lots, sidewalks, lighting, traffic signs and accessory equipment; and
 - (iii) For which the developer has expended a minimum of four million dollars (\$4,000,000).
- (e) "Retailer" has the same meaning as provided in section 63-3610, Idaho Code;
- (f) "Retail sales" has the same meaning as that term is defined in section 63-3609, Idaho Code.
- (3) To obtain the rebate provided by this section, the developer of a retail complex shall file a written claim with the state tax commission.
- (a) The claim shall:
- (i) Identify the location and boundaries of the retail complex;
 - (ii) Identify the qualified retailers making retail sales within the complex;
 - (iii) Include verification that the developer has met the expenditure requirements of paragraph (2)(d)(iii) of this section;
 - (iv) Include certification from the Idaho transportation department or political subdivision of the amount expended on the approved transportation improvements related to the retail complex;
 - (v) Contain such additional information as the state tax commission may require by rule.
- (b) The claim shall be subject to such reasonable documentation and verification as the state tax commission may require.
- (c) A developer of a retail complex must submit a claim under this subsection within two (2) years of the developer's last expenditure on approved transportation improvements.
- (4)(a) Upon approval by the state tax commission, the developer is entitled to receive a rebate of sixty percent (60%) of all sales and use taxes imposed by this chapter and remitted to the state tax commission after the date of approval by qualified retailers in the retail complex but not to exceed the lesser of:
- (i) The amount certified pursuant to subsection (3)(a)(iv) of this section; or
 - (ii) The limitation imposed by subsection (5)(c) of this section.
- (b) No interest shall be paid on the amounts rebated.
- (c) All sales and use tax information remitted by retailers shall be deemed a trade secret, shall be confidential and shall not be disclosed by the state tax commission.
- (5)(a) When a retailer certifies to the state tax commission and the commission determines that the requirements of subsection (3)(a)(i), (ii) and (iii) of this section have been met, sixty percent (60%) of all sales and use taxes imposed by this chapter and remitted to the state tax commission after the date of approval by qualified retailers in the retail complex, shall be deposited into the demonstration pilot project fund, which is hereby created in the state treasury.
- (b) All moneys rebated shall be paid by the state tax commission from the demonstration pilot project fund in a timely manner not to exceed sixty

(60) calendar days after receipt as funds are available in the demonstration pilot project fund. Payments shall be specific to and accounted for by each project.

(c) Once a total of thirty-five million dollars (\$35,000,000) has been paid in as a rebate on a particular approved transportation improvement, no additional rebates shall be paid in regard to that approved transportation improvement.

History.

I.C., § 63-3641, as added by 2009, ch. 62, § 3, p. 168.

STATUTORY NOTES

Prior Laws.

Former § 63-3641, which comprised I.C., § 63-3641, as added by 2007, ch. 172, § 1, p. 506, was repealed by S.L. 2009, ch. 62, § 2.

Compiler's Notes.

Section 146 of S.L. 2009, ch. 341 purported to amend this section, effective January 1, 2011, but the amendment could not be given effect because of the repeal and enactment of the section by S.L. 2009, ch. 62, §§ 2 and 3. As amended by S.L. 2009, ch. 341, § 146, this section would have read: "**Tangible personal property sold by certain retailers.** (1) A developer of a retail commercial complex whose stores sell tangible personal property or taxable services and collected sales or use tax from customers at the location of the developer's retail commercial complex may qualify for a rebate of taxes paid on such purchases, but only if the developer of a retail commercial complex whose stores sell tangible personal property or taxable services has built a complex in Idaho that is of a minimum cost as provided in subsection (2) of this section and has incurred costs in excess of eight million dollars (\$8,000,000) for the installation of an interchange from an interstate highway or a highway enumerated in section 40-201, Idaho Code, by the Idaho transportation department or a political subdivision or a contractor of the transportation department or political subdivision and/or freeway interchange improvements on land owned by the state of Idaho or a political subdivision and/or auxiliary lanes necessitated by the design and construction of interchanges.

"(2) To qualify for the rebate, the developer of a retail commercial complex whose stores sell tangible personal property or taxable services shall have those stores collect sales and use taxes on sales of tangible personal property or taxable services from the retail commercial complex. Any improvement or alteration to a public highway must be bonded in accordance with the public contracts bond act

in chapter 19, title 54, Idaho Code. Once the developer of a retail commercial complex whose stores sell tangible personal property or taxable services certifies that the retail commercial complex has cost a minimum of four million dollars (\$4,000,000) and the developer of a retail commercial complex whose stores sell tangible personal property or taxable services has expended in excess of eight million dollars (\$8,000,000) for the installation of an interchange and/or related interchange improvements from an interstate highway by the Idaho transportation department or a political subdivision or a contractor of the transportation department or political subdivision and/or freeway interchange improvements, the developer may file with the state tax commission a refund request of sixty percent (60%) of the sales and use taxes collected for the sale of tangible personal property or taxable services from stores in the retail commercial complex. The refund request shall state that the developer of a retail commercial complex whose stores sell tangible personal property or taxable services has constructed a retail facility that meets the minimum expenditure requirements and also meets the minimum expenditure requirements for an interchange and/or related freeway interchange improvements and/or highway improvements to be eligible for the rebate, and that the developer is entitled to receive a rebate of sixty percent (60%) of all sales and use taxes collected by the stores in the retail commercial complex that qualifies for the rebate created by this section. The state tax commission may require that sufficient documentation be provided by the developer of a retail commercial complex whose stores sell tangible personal property or taxable services regarding expenditures and shall require an attestation from the Idaho transportation department or a political subdivision that the minimum requirements of this section have been met. The transportation department or the political subdivision shall verify to the state tax commission the

amount of expenditures the developer has expended on the interchange and/or related freeway interchange improvements and/or highway improvements.

"(3) Upon filing of a written refund claim by the developer of a retail commercial complex whose stores sell tangible personal property or taxable services entitled to the rebate, and subject to such reasonable documentation and verification as the state tax commission may require, the rebate shall be paid by the state tax commission from the demonstration pilot project fund, which is hereby created in the state treasury, in a timely manner not to exceed sixty (60) calendar days after receipt as funds are available. To qualify for the rebate, stores in an eligible complex shall report their sales to the state tax commission separately from other stores they own in the state. Nothing in this section shall be deemed to hold the state of Idaho or any political subdivision liable for any and all liens filed on a project subject to rebate pursuant to this section. All sales and use tax information remitted by retailers shall be deemed a trade secret, shall be confidential and shall not be disclosed by the state tax commission. A developer of a retail commercial complex whose stores sell tangible personal property or taxable services must submit a claim for refund pursuant to this section within two (2) years of the developer's last expenditure on the interchange and/or related freeway interchange improvements and/or highway improvements. No interest shall be paid by the state on moneys refunded and all moneys refunded shall be paid from the sales tax

account pursuant to subsection (12) of section 63-3638, Idaho Code, and shall be limited to a total aggregate of thirty-five million dollars (\$35,000,000) or lesser amount if that is what was expended.

"(4) Once the developer of a retail commercial complex whose stores sell tangible personal property or taxable services has recouped its costs of funding the interchange and/or related freeway interchange improvements and/or highway improvements and/or related transportation infrastructure, the developer shall be ineligible to receive the rebate pursuant to this section.

"(5) As used in this section:

"(a) 'Development of a retail commercial complex whose stores sell tangible personal property or taxable services' includes all buildings, the parking lot, sidewalks and all accessory equipment including, but not limited to, lighting and traffic signs. Retail stores in the retail commercial complex shall sell tangible personal property or taxable services that are subject to the sales and use tax.

"(b) 'Freeway interchange improvements' includes on and off ramps, overpass and underpass improvements and signalization to facilitate the effective access from the interstate highway system.

"(c) 'Highway improvements' shall be improvements or upgrades to highways enumerated in section 40-201, Idaho Code."

Effective Dates.

Section 4 of S.L. 2009, ch. 62 provided that the act should take effect on and after March 31, 2009.

CHAPTER 38

BOARD OF TAX APPEALS

63-3812. Appeal from board — Payment of taxes while on appeal.

JUDICIAL DECISIONS

ANALYSIS

Administrative remedy process.
Burden of proof.

Administrative Remedy Process.

Taxpayer who appealed a county tax assessment ruling to the board of tax appeals but was not present at the board's hearing failed to exhaust his administrative remedies and, thus, was not entitled to judicial review, because a board rule required him to actually appear and participate in the hearing. *Blanton v. Canyon County*, 144 Idaho 718, 170 P.3d 383 (2007).

Taxpayer, who was also a member of the

Idaho state legislature, was just a taxpayer, with no greater privilege than his constituents. Idaho Const. art. III, § 7 speaks of privilege from liability to civil process, not privilege from conformance with the rules governing permissive actions. Accordingly, because the taxpayer failed to timely file his board of tax appeals (BTA) appeal, he failed to exhaust his administrative remedies; consequently, neither the BTA nor the district court had jurisdiction to consider any of the taxpayer-

er’s arguments about the legality or appropriateness of Idaho’s tax system. *Hart v. Idaho State Tax Comm’n*, 154 Idaho 621, 301 P.3d 627 (2012).

Burden of Proof.

Taxpayer had the burden, by only a preponderance of the evidence, to show that real property valuations were erroneous, both be-

fore the board of tax appeals and in the district court. There was no reversible error, however, in also citing the clear and convincing standard, as the district court’s order showed that the evidence failed to even meet the lower burden of proof. *Wurzburg v. Kootenai County*, — Idaho —, 308 P.3d 936 (Ct. App. 2013).

CHAPTER 41

SPECIAL DISTRICT DISSOLUTION ACT

SECTION.

63-4103. Petitions for dissolution of special districts.

63-4103. Petitions for dissolution of special districts. — Proceedings for the dissolution of a special district may be initiated by a petition containing the signatures of qualified electors of the district or owners of property within the district equal in number to twenty-five percent (25%) of the largest number of persons who voted for any director in the last election of directors or if no election has been held within two (2) years then a petition may be initiated by twenty-five (25) or more qualified electors or property owners of the district.

The petition, when completed and verified, shall be filed with the clerk of the county or counties if more than one (1) county is involved. The county clerk shall publish notice and the county commissioners shall hold a hearing on the matter. If necessary, they shall hold an election, subject to the provisions of section 34-106, Idaho Code, on the matter. The hearing and election shall be held in accordance with the terms and provisions of chapter 14, title 34, Idaho Code.

History.

I.C., § 63-4103, as added by 1987, ch. 87,

§ 1, p. 165; am. 1995, ch. 118, § 89, p. 417; am. 2009, ch. 341, § 147, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in the last paragraph, deleted “the court of” following “clerk of” in the first sentence, substituted “county clerk” for “county commissioners” and inserted “the county commissioners shall” in the second sentence, and deleted “sections

40-1801 through 40-1809, and” preceding “chapter 14” in the last sentence.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

CHAPTER 44

THE IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005

SECTION.

- 63-4401. Short title.
63-4402. Definitions.
63-4403. Additional income tax credit for capital investment.
63-4404. Real property improvement tax credit.
63-4405. Additional income tax credit for new jobs.

SECTION.

- 63-4406. Limitations, and other provisions on credits against income taxes.
63-4408. Sales and use tax incentives — Rebates — Recapture.

63-4401. Short title. — This chapter shall be known and may be cited as “The Idaho Small Employer Incentive Act of 2005.”

History.

I.C., § 63-4401, as added by 2005, ch. 370, § 1, p. 1178; am. 2008, ch. 390, § 3, p. 1073.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 390, deleted “Application” from the end of the section catchline; and deleted the last sentence, which read: “No provision of this chapter

applies to a person, taxpayer, or other entity entitled to, applying for, or receiving any credit, rebate or other benefit under chapter 29, 39 or 43, title 63, Idaho Code.”

63-4402. Definitions. — (1) The definitions contained in the Idaho income tax act, shall apply to this chapter unless modified in this chapter or unless the context clearly requires another definition.

(2) As used in this chapter:

- (a) “Commission” means the Idaho state tax commission.
- (b) “New plant and building facilities” means facility or facilities, including related parking facilities, where employees are physically employed.
- (c) “Idaho income tax act” means chapter 30, title 63, Idaho Code.
- (d) “Investment in new plant” means investment in new plant and building facilities that are:

- (i) Qualified investments; or
- (ii) Buildings or structural components of buildings.

(e) “New employee”:

(i) Means an individual, employed primarily within the project site by the taxpayer, subject to Idaho income tax withholding whether or not any amounts are required to be withheld, covered for unemployment insurance purposes under chapter 13, title 72, Idaho Code, and who was eligible to receive employer provided coverage under a health benefit plan as described in section 41-4703, Idaho Code, during the taxable year. A person shall be deemed to be so employed if such person performs duties on a regular full-time basis.

(ii) The number of employees employed primarily within the project site by the taxpayer, during any taxable year for a taxpayer shall be the

mathematical average of the number of such employees reported to the Idaho department of labor for employment security purposes during the twelve (12) months of the taxable year which qualified under paragraph (e)(i) of this subsection (2). In the event the business is in operation for less than the entire taxable year, the number of employees of the taxpayer for the year shall be the average number actually employed during the months of operation, provided that the qualifications of paragraph (e)(i) of this subsection (2) are met.

(iii) Existing employees of the taxpayer who obtain new qualifying positions within the project site and employees transferred from a related taxpayer or acquired as part of the acquisition of a trade or business from another taxpayer within the prior twelve (12) months are not included in this definition unless the new position or transfer creates a net new job in Idaho.

(f) "Project period" means the period of time beginning at a physical change to the project site or the first employment of new employees located in Idaho who are related to the activities at the project site, and ending when the facilities constituting the project are placed in service, but no later than December 31, 2020 and no longer than ten (10) years after the beginning.

(g) "Project site" means an area or areas at which new plant and building facilities are located and at which the tax incentive criteria have been or will be met and which are either:

(i) A single geographic area located in this state at which the new plant and building facilities owned or leased by the taxpayer are located; or

(ii) One (1) or more geographic areas located in this state if eighty percent (80%) or more of the investment required by subsection (2)(j)(i) of this section is made at one (1) of the areas.

(iii) The project site must be identified and described to the commission by a taxpayer subject to tax under the Idaho income tax act, in the form and manner prescribed by the commission.

(h) "Qualified investment" shall be defined as in section 63-3029B, Idaho Code.

(i) "Recapture period" means:

(i) In the case of credits described in sections 63-4403 and 63-4404, Idaho Code, the same period for which a recapture of investment tax credit under section 63-3029B, Idaho Code, is required; or

(ii) In the case of credits described in section 63-4405, Idaho Code, five (5) years from the date the project period ends.

(j) "Tax incentive criteria" means a taxpayer meeting at a project site the requirements of subparagraphs (i) and (ii) of this paragraph (j).

(i) During the project period, making capital investments in new plant of at least five hundred thousand dollars (\$500,000) at the project site.

(ii) During a period of time beginning on January 1, 2006, and ending at the conclusion of the project period:

1. Increasing employment at the project site by at least ten (10) new employees each of whom must earn at least nineteen dollars and twenty-three cents (\$19.23) per hour worked during the taxpayer's taxable year.

2. Employment increases above the ten (10) new employees described in subparagraph (ii)1. of this paragraph (j) at the project site shall on average earn at least fifteen dollars and fifty cents (\$15.50) per hour worked during the taxpayer's taxable year. Calculation of the group average earnings shall not include amounts paid to any employee earning more than forty-eight dollars and eight cents (\$48.08) per hour.

3. Earnings calculated pursuant to subparagraph (ii) of this paragraph (j) shall include income upon which Idaho income tax withholding is required under section 63-3035, Idaho Code, but shall not include income such as stock options or restricted stock grants.

4. For purposes of determining whether the increased employment threshold has been met, employment at the project site shall be determined by calculating the increase of such new employees reported to the Idaho department of labor for employment security purposes over the employees so reported as of the beginning of the project period or no earlier than January 1, 2006, whichever is larger; and

5. Maintaining net increased employment in Idaho required by subparagraph (ii) of this paragraph (j) during the remainder of the project period.

(k) "Taxpayer," for purposes of paragraphs (j) and (e) of this subsection (2), means either:

(i) A single taxpayer; or

(ii) In the context of a unitary group filing a combined report under section 63-3027(t), Idaho Code, all members of a unitary group includable in a combined report for the tax years in which the credit provided for by this chapter may be claimed. For all other purposes, the terms of section 63-3009, Idaho Code, and section 63-3027(t)(1), Idaho Code, apply to the meaning of "taxpayer."

History.

I.C., § 63-4402, as added by 2005, ch. 370, § 1, p. 1178; am. 2006, ch. 314, § 1, p. 974;

am. 2007, ch. 360, § 25, p. 1061; am. 2008, ch. 90, § 1, p. 250; am. 2009, ch. 191, § 1, p. 622.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 90, in paragraph (2)(j)(ii)2., deleted "or less than twelve dollars (\$12.00) per hour worked during the taxpayer's taxable year" from the end, and deleted the former last sentence, which read: "The denominator of this calculation shall be the number of new job positions filled that pay less than forty eight dollars and eight cents

(\$48.08) per hour worked during the taxpayer's taxable year."

The 2009 amendment, by ch. 191, in subsection (2)(f), deleted "the earlier of" preceding "a physical change" and "but no earlier than January 1, 2006" preceding "and ending when," substituted "December 31, 2020" for "December 31, 2012," and added "and no longer than ten (10) years after the beginning."

63-4403. Additional income tax credit for capital investment. —

(1) For taxable years beginning on or after January 1, 2006, and before December 31, 2020, and subject to the limitations of this chapter, a taxpayer who has certified that the tax incentive criteria will be met within a project

site during a project period shall, in regard to qualified investments made after the beginning of the project period and before December 31, 2020, in lieu of the investment tax credit provided in section 63-3029B, Idaho Code, be allowed a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, in the amount of three and seventy-five one hundredths percent (3.75%) of the amount of qualified investment made during the project period, wherever located within this state.

(2) The credit allowed by this section shall not exceed sixty-two and five-tenths percent (62.5%) of the tax liability of the taxpayer.

(3) The credit allowed by this section shall not exceed seven hundred fifty thousand dollars (\$750,000) in any one (1) taxable year.

History.

I.C., § 63-4403, as added by 2005, ch. 370, § 1, p. 1178; am. 2006, ch. 314, § 2, p. 974;

am. 2009, ch. 191, § 2, p. 622; am. 2010, ch. 44, § 3, p. 78.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 191, twice substituted "December 31, 2020" for "December 31, 2012" in subsection (1).

The 2010 amendment, by ch. 44, substituted "the project period" for "a taxable year" near the end of subsection (1).

Effective Dates.

Section 4 of S.L. 2010, ch. 44 declared an emergency retroactively to January 1, 2010 and approved March 15, 2010.

63-4404. Real property improvement tax credit. — (1) For taxable years beginning on or after January 1, 2006, and before December 31, 2020, subject to the limitations of this chapter, a taxpayer who has certified that the tax incentive criteria will be met within a project site during a project period shall be allowed a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, in the amount of two and five-tenths percent (2.5%) of the investment in new plant which is incurred during the project period applicable to the project site in which the investment is made.

(2) The credit allowed by this section shall not exceed one hundred twenty-five thousand dollars (\$125,000) in any one (1) taxable year.

(3) No credit is allowable under this section for a qualified investment in regard to which a credit under section 63-4403, Idaho Code, is available.

(4) The credit allowed by this section is limited to buildings and structural components of buildings related to new plant and building facilities.

History.

I.C., § 63-4404, as added by 2005, ch. 370,

§ 1, p. 1178; am. 2006, ch. 314, § 3, p. 974; am. 2009, ch. 191, § 3, p. 622.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 191, substi-

tuted "December 31, 2020" for "December 31, 2012" in subsection (1).

63-4405. Additional income tax credit for new jobs. — (1) Subject to the limitations of this chapter, for taxable years beginning on or after January 1, 2006, and before December 31, 2020, a taxpayer who has certified that the tax incentive criteria will be met within a project site during a project period shall, for the number of new employees earning more than a rate of twenty-four dollars and four cents (\$24.04) per hour worked, in lieu of the credit amount in subsection (3) of section 63-3029F, Idaho Code, be allowed the credit provided by this section. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following:

- (a) The number of employees for the prior taxable year; or
- (b) The average of the number of employees for the three (3) prior taxable years.

(2) The credit provided by this section shall be:

(a) One thousand five hundred dollars (\$1,500) for each new employee whose annual salary during the taxable year for which the credit is earned is greater than twenty-four dollars and four cents (\$24.04) per hour worked but equal to or less than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked;

(b) Two thousand dollars (\$2,000) for each new employee whose annual salary during the taxable year for which the credit is earned is greater than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked but equal to or less than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked;

(c) Two thousand five hundred dollars (\$2,500) for each new employee whose annual salary during the taxable year for which the credit is earned is greater than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked but equal to or less than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked;

(d) Three thousand dollars (\$3,000) for each new employee whose annual salary during the taxable year for which the credit is earned is greater than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked.

(3) The credit allowed by subsection (1) of this section shall apply only to employment primarily within the project site. No credit shall be earned unless such employee shall have performed such duties for the taxpayer for a minimum of nine (9) months during the taxable year for which the credit is claimed.

(4) The credit allowed by this section shall not exceed sixty-two and five-tenths percent (62.5%) of the tax liability of the taxpayer.

(5) Employees transferred from a related taxpayer or acquired from another taxpayer within the prior twelve (12) months shall not be included in the computation of the credit unless the transfer creates a net new job in Idaho.

History.

I.C., § 63-4405, as added by 2005, ch. 370, § 1, p. 1178; am. 2006, ch. 314, § 4, p. 974;

am. 2009, ch. 191, § 4, p. 622; am. 2011, ch. 318, § 4, p. 925.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 191, substituted “December 31, 2020” for “December 31, 2012” in the first sentence in subsection (1).

The 2011 amendment, by ch. 318, substituted “subsection (3)” for “subsection (2)(a)” in the introductory paragraph in subsection (1).

Effective Dates.

Section 5 of S.L. 2011, ch. 318 declared an emergency retroactively to January 1, 2011. Approved April 13, 2011.

63-4406. Limitations, and other provisions on credits against income taxes. — (1) In addition to other needed rules, the state tax commission may promulgate rules prescribing:

(a) In the case of S corporations, partnerships, trusts or estates, a method of attributing a credit under this chapter to the shareholders, partners or beneficiaries in proportion to their share of the income from the S corporation, partnership, trust or estate; and

(b) The method by which the carryover of credits and the duty to recapture credits shall survive and be transferred in the event of reorganizations, mergers or liquidations.

(2) In the case of a unitary group of corporations filing a combined report under subsection (t) of section 63-3027, Idaho Code, credits against income tax provided by sections 63-4403, 63-4404 and 63-4405, Idaho Code, earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the limitation in subsection (3) of this section, instead of carried over. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member or members who earned the credit are no longer included in the combined group.

(3) The total of all credits allowed by sections 63-4403, 63-4404 and 63-4405, Idaho Code, together with any credits carried forward under subsection (4) of this section shall not exceed the amount of tax due under sections 63-3024, 63-3025 and 63-3025A, Idaho Code, after allowance for all other credits permitted by this chapter and the Idaho income tax act.

(4) If the credits exceed the limitation under subsection (3) of this section, the excess amount may be carried forward for a period that does not exceed:

(a) The next fourteen (14) taxable years in the case of credits allowed by sections 63-4403 and 63-4404, Idaho Code; or

(b) The next ten (10) taxable years in the case of credits allowed by section 63-4405, Idaho Code.

History.

I.C., § 63-4406, as added by 2005, ch. 370,

§ 1, p. 1178; am. 2006, ch. 195, § 7, p. 599; am. 2008, ch. 390, § 4, p. 1073.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 390, deleted

“chapter 29, title 63, Idaho Code” following “by this chapter” in subsection (3).

63-4408. Sales and use tax incentives — Rebates — Recapture. — (1) For calendar years beginning on January 1, 2006, and ending on

December 31, 2020, subject to the limitations of this chapter, a taxpayer who has certified that the tax incentive criteria will be met within the project site shall be entitled to receive a rebate of twenty-five percent (25%) of all sales and use taxes imposed by chapter 36, title 63, Idaho Code, and that the taxpayer or its contractors actually paid in regard to any property constructed, located or installed within the project site during the project period for that site.

(2) Upon filing of a written refund claim by the taxpayer entitled to the rebate, and subject to such reasonable documentation and verification as the commission may require, the rebate shall be paid by the commission as a refund allowable under section 63-3626, Idaho Code. A claim for rebate under this section must be filed on or before the last day of the third calendar year following the year in which the taxes sought to be rebated were paid or the right to the rebate is lost.

(3) Any rebate paid shall be subject to recapture by the commission:

(a) At one hundred percent (100%) in the event that the tax incentive criteria are not met at the project site during the project period, or

(b) In the event that the property is not used, stored or otherwise consumed within the project site for a period of sixty (60) consecutive full months after the property was placed in service, or

(c) In the event that the employment required in section 63-4402(2)(j), Idaho Code, is not maintained for sixty (60) consecutive full months from the date the project period ends.

(d) Any recapture required by subsection (3)(b) or (3)(c) of this section shall be in the same proportion as an amount of credit required to be recaptured under section 63-3029B, Idaho Code.

(4) Any recapture amount due under this section shall be a deficiency in tax for the period in which the disqualification first occurs for purposes of section 63-3629, Idaho Code, and may be enforced and collected in the manner provided by the Idaho sales tax act, provided however, that in lieu of the provisions of section 63-3633, Idaho Code, the period of time within which the commission may issue a notice under section 63-3629, Idaho Code, in regard to an amount subject to recapture, shall be the later of five (5) years after the end of the taxable year, for income tax purposes, in which the project period ends.

(5) The rebate allowed by this section is limited to sales and use taxes actually paid by the taxpayer or its contractors for taxable property related to new plant and building facilities.

History.

I.C., § 63-4408, as added by 2005, ch. 370,

§ 1, p. 1178; am. 2006, ch. 314, § 5, p. 974; am. 2009, ch. 191, § 5, p. 622.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 191, substi-

tuted "December 31, 2020" for "December 31, 2012" in subsection (1).

CHAPTER 45

NEW CAPITAL INVESTMENTS INCENTIVE ACT

SECTION.

63-4501. Short title.

63-4502. Tax exemption for new capital investments.

63-4501. Short title. — This chapter shall be known and may be cited as the “Idaho New Capital Investments Incentive Act of 2008.”

History.

I.C., § 63-4501, as added by 2008, ch. 234,
§ 1, p. 712.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2008, ch. 234 declared an

emergency retroactively to January 1, 2008.
Approved March 24, 2008.

63-4502. Tax exemption for new capital investments. — (1) For calendar years beginning on or after January 1, 2008, the net taxable value of all property of a taxpayer, whether acquired before, during or after the qualifying period, in excess of four hundred million dollars (\$400,000,000) located within a single county in Idaho shall be exempt from property taxation and any special assessment, but only if the taxpayer makes a qualifying new capital investment as defined in subsection (2) of this section.

(2) For purposes of this section, the following definitions shall apply:

(a) “Qualifying new capital investment” means an investment of at least one billion dollars (\$1,000,000,000) made during the qualifying period by the acquisition, construction, improvement or installation of real or personal property related to new plant and building facilities at a project site located within the county referred to in subsection (1) of this section.

(b) “New plant and building facilities” means:

(i) Qualified investments as defined in section 63-3029B, Idaho Code;
or

(ii) Buildings or structural components of buildings, including equipment, materials and fixtures thereof whether used at a project site or temporarily stored off-site in the county referred to in subsection (1) of this section and intended for use at a project site.

(c) “Qualifying period” means an eighty-four (84) month period of time beginning at the first inspection of the permanent building structure at a project site following issuance of the building permit, but in no case earlier than January 1, 2008, and ending no later than eighty-four (84) full months after such inspection takes place.

(d) “Project site” means an area or areas at which the new plant and building facilities described in subsection (2)(b) of this section are built.

(3) The property included in the calculation for purposes of determining a qualifying new capital investment value shall include all real property

owned, and all personal property owned, leased or rented. With respect to leased or rented personal property, only that portion of the property for which a taxpayer is contractually liable for payment of property taxes thereon, shall be included in the calculation of the investment.

(4) Notwithstanding the exemption provided in subsection (4) of section 63-3029B, Idaho Code, no other exemption from property tax or any special assessment provided by the statutes of this state shall be applicable to any property described in subsection (2) of this section with respect to a year in which the incentives set forth in subsection (1) of this section apply to any of the same property.

(5) Property subject to the provisions of this section shall not be included on any property roll or any new construction roll prepared by the county assessor in accordance with section 63-301 or 63-301A, Idaho Code, respectively.

(6) The state tax commission shall adopt all rules that may be necessary to implement the provisions of this section.

History.

I.C., § 63-4502, as added by 2008, ch. 234, § 1, p. 712; am. 2011, ch. 10, § 1, p. 22.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 10, in subsection (1), inserted “whether acquired before, during or after the qualifying period” and substituted “if the taxpayer makes a qualifying new capital investment” for “to the extent that such property constitutes a new capital investment”; in paragraph (2)(a), inserted “Qualifying” at the beginning and substituted “qualifying period” for “project period”; inserted “including equipment, materials and fixtures thereof whether used at a project site or temporarily stored off-site in the county referred to in subsection (1) of this section and intended for use at a project site” at the end of paragraph (2)(b)(ii); in paragraph (2)(c), substituted “‘Qualifying period’ means an eighty-four (84) month period of time” for “‘Project period’ means the period of time” at the beginning, inserted “at a project site” near the middle, and substituted “eighty-four (84) full months after such inspection” for “seven (7) years after the calendar year in which such inspection” near the end; substituted “built”

for “located” at the end of paragraph (2)(d); inserted “a qualifying new capital” near the beginning of subsection (3); and substituted “any property roll or any new construction” for “the property roll or the new construction” in subsection (5).

Compiler’s Notes.

Section 2 of S.L. 2008, ch. 234 provided “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates.

Section 3 of S.L. 2008, ch. 234 declared an emergency retroactively to January 1, 2008. Approved March 24, 2008.

Section 2 of S.L. 2011, ch. 10 declared an emergency retroactively to January 1, 2010. Approved February 23, 2011.

TITLE 65

SOLDIERS AND SAILORS

CHAPTER.

1. SERVICEMEN'S MEMORIALS, § 65-101.
2. DIVISION OF VETERANS SERVICES — VETERANS AFFAIRS COMMISSION, §§ 65-202, 65-209.
3. OFFICIAL SERVICES FOR VETERANS, § 65-301.
5. RIGHTS AND PRIVILEGES OF VETERANS, §§ 65-501 — 65-503A, 65-504, 65-506, 65-512, 65-513.

CHAPTER.

6. SERVICE OFFICERS FOR AID OF VETERANS, § 65-602.
7. IDAHO VETERANS RECOGNITION ACT, §§ 65-701 — 65-706.

CHAPTER 1

SERVICEMEN'S MEMORIALS

SECTION.

65-101. County memorial commission — Cre-

ation and powers — Appropriation.

65-101. County memorial commission — Creation and powers — Appropriation. — There is hereby created a county commission to consist of the commander, commanders or designee of local veteran service organizations and county commissioners in each county in the state of Idaho, said commission to receive no compensation for their services. The commission shall determine the kind, character, design and style of memorial to be erected in any county in the state of Idaho to the memory of deceased service men and women who lost their lives in any war or conflict. Said commission to have full power and authority to determine the kind, character, design and style of said memorial on behalf of the citizens of this state.

History.

1919, ch. 67, § 1, p. 242; am. 1921, ch. 219,

§ 1, p. 489; I.C.A., § 63-101; am. 2009, ch. 277, § 1, p. 840.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 277, rewrote

the section to the extent that a detailed comparison is impracticable.

CHAPTER 2

DIVISION OF VETERANS SERVICES — VETERANS AFFAIRS COMMISSION

SECTION.

65-202. Powers and duties.

SECTION.

65-209. Veterans support fund.

65-202. Powers and duties. — The administrator of the division of veterans services shall have full power and authority on behalf of the state of Idaho, in recognition of the services rendered by veterans of the armed forces of the United States, to:

(1) Oversee the management and operation of the veterans homes in the state and the state veterans cemetery, and provide care to veterans of the armed forces of the United States under such rules as the administrator may, from time to time, adopt.

(2) Extend financial relief and assistance to disabled or destitute wartime veterans and to those dependent upon such disabled or destitute wartime veterans as the commission shall determine to be reasonably required under such rules as the administrator may, from time to time, adopt.

(3) Collect benefits paid by the United States department of veterans affairs for burial and plot allowance for persons interred at the state veterans cemetery.

(4) Prescribe, with the approval of the commission, the qualifications of all personnel in accordance with the Idaho personnel system law. The administrators in charge of state veterans homes, the office of veterans advocacy, and the state veterans cemetery, shall be considered nonclassified exempt employees pursuant to the provisions of chapter 53, title 67, Idaho Code, and shall serve at the pleasure of the administrator of the division of veterans services.

(5) Accept gifts, grants, contributions and bequests of funds, and personal property to the state of Idaho for the benefit of veterans of the armed forces of the United States.

(6) Enter into contracts, within the limit of funds available therefor, acquire services and personal property, and do and perform any acts that may be necessary in the administration of services to veterans of the armed forces of the United States.

(7) Administer, with the advice and approval of the commission, moneys in the veterans cemetery maintenance fund established in section 65-107, Idaho Code.

(8) Establish by rule charges related to interment, disinterment and reinterment in the state veterans cemetery and the administrator is hereby directed to cause such charges to be deposited in the veterans cemetery maintenance fund established in section 65-107, Idaho Code.

(9) In his discretion, assume control of the cremated remains of deceased persons qualified for interment in the state veterans cemetery, apply for burial and plot allowance benefits paid by the United States department of veterans affairs for such deceased persons and inter in the state veterans cemetery the cremated remains of deceased persons qualified for interment in the state veterans cemetery.

(10) Administer programs offered by the United States department of veterans affairs for the certification and supervision of educational and training opportunities for veterans.

History.

1921, ch. 46, § 2, p. 73; I.C.A., § 63-202; am. 1943, ch. 20, § 1, p. 47; am. 1957, ch. 132, § 2, p. 222; am. 1969, ch. 37, § 2, p. 91; am. 1974, ch. 23, § 175, p. 633; am. 1990, ch. 56, § 4, p. 127; am. 2000, ch. 59, § 3, p. 125; am. 2001, ch. 198, § 1, p. 676; am. 2001, ch. 199,

§ 2, p. 678; am. 2002, ch. 49, § 3, p. 110; am. 2002, ch. 54, § 1, p. 122; am. 2003, ch. 42, § 2, p. 163; am. 2003, ch. 53, § 2, p. 194; am. 2004, ch. 318, § 13, p. 892; am. 2005, ch. 337, § 2, p. 1054; am. 2007, ch. 16, § 1, p. 27; am. 2009, ch. 10, § 1, p. 12.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 10, added subsection (10).

65-209. Veterans support fund. — (1) There is hereby created in the state treasury the “Veterans Support Fund” to which shall be credited:

- (a) The moneys designated under sections 63-3067A and 63-3067B, Idaho Code, and the moneys designated under section 49-403B, Idaho Code;
- (b) Gifts, grants, contributions and bequests to the fund;
- (c) Interest earned on the investment of idle moneys in the fund, which shall be paid to the fund; and
- (d) All other moneys as may be provided by law.

(2) Moneys in the fund shall be used exclusively for the purposes of programs to support veterans and to defray the costs of administering gold star license plate eligibility pursuant to section 49-403B, Idaho Code. Moneys in the fund shall be continuously appropriated for such purposes.

(3) Disbursements of moneys from the fund shall be made upon authorization of the administrator of the division of veterans services.

History.

I.C., § 65-209, as added by 2008, ch. 17, § 2, p. 24; am. 2009, ch. 213, § 2, p. 672; am. 2014, ch. 17, § 2, p. 24.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 213, in subsection (1)(a), added “and the moneys designated under section 49-403B, Idaho Code”; and, in subsection (2), added “to defray the costs of administering gold star license plates

eligibility pursuant to section 49-403B, Idaho Code” in the first sentence and inserted “in the fund” in the last sentence.

The 2014 amendment, by ch. 17, substituted “sections 63-3067A and 63-3067B” for “section 63-3067B” in paragraph (1)(a).

CHAPTER 3

OFFICIAL SERVICES FOR VETERANS

SECTION.

65-301. Performance without fee — Services enumerated.

65-301. Performance without fee — Services enumerated. —

(1) Any state, county, city or public officer, or board, or body, acting in his or her or its official capacity on behalf of the state, county, or city, including notaries public, shall not collect, demand or receive any fee or compensation for recording or indexing the discharge papers of any male or female veteran who had active service in any war or conflict officially engaged in by the government of the United States; or for issuing certified copies thereof, or for any service whatever rendered by any such officer or officers, in the matter of a pension claim, application, affidavit, voucher, or in the matter of any claim to be presented to the United States department of veterans affairs or for the purposes of securing any benefits under acts of congress providing pension benefits for honorably discharged veterans of any war, and all acts

or parts of acts amendatory thereto, or for furnishing a certified copy of the public record of a marriage, death, birth, divorce, deed of trust, mortgage, or property assessment, or making a reasonable search for the same, wherein the same is to be used in a claim for pension, or a claim for allotment, allowance, compensation, insurance, automatic insurance, or otherwise provided for by any and all legislation by congress providing pension benefits for honorably discharged veterans of any war.

(2) Any veteran wishing to record his or her discharge papers may do so with personal identifying information such as date of birth, social security number, home address(es), blood type and other personal identifying information redacted from the document. The name of the veteran may not be redacted from the document.

(3) Any veteran or surviving spouse of any veteran of the United States armed forces or his or her surviving spouse, attorney, personal representative, executor or court appointed guardian has the right to request that a county recorder remove from the official records any of the following forms recorded before, on or after July 1, 2003, by or on behalf of the requesting veteran: DD-214; DD-215; WD AGO 53; WD AGO 55; WD AGO 53-55; NAVMC 78-PD; and NAVPERS 553. The request must specify the identification page number of the form to be removed. The request shall be made in person and with appropriate identification to allow determination of identity. The county recorder has no duty to inquire beyond the requestor to verify the identity of the person requesting removal. No fee shall be charged for the removal. Any paper and reasonably retrievable electronic likeness, the removal of which will not affect other recorded documents, shall be removed from the record.

(4) No DD-214, DD-215, WD AGO 53, WD AGO 55, WD AGO 53-55, NAVMC 78-PD, and NAVPERS 553, which is recorded at the request of any veteran of the United States armed forces or his or her surviving spouse, attorney, personal representative, executor or court appointed guardian shall be a public record subject to release by the provisions of sections 9-337 through 9-352, Idaho Code, without the express written consent of one (1) of the above enumerated individuals.

(5) Nothing in this section shall create or permit any cause of action against a county, county employee or the state of Idaho based upon harm caused by information released from the records of the county.

History.

1927, ch. 110, § 1, p. 152; I.C.A., § 63-301; am. 1969, ch. 25, § 1, p. 49; am. 1995, ch. 3,

§ 1, p. 9; am. 2003, ch. 26, § 1, p. 95; am. 2011, ch. 302, § 6, p. 866.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 302, substi-

tuted "sections 9-337 through 9-352" for "sections 9-337 through 9-350" in subsection (4).

CHAPTER 5

RIGHTS AND PRIVILEGES OF VETERANS

SECTION.

- 65-501. Statement of purpose.
- 65-502. Definitions.
- 65-503. Eligibility for preference.
- 65-503A. Employer obligations.
- 65-504. Basic preference and addition of points to competitive examination ratings.

SECTION.

- 65-506. Failing or refusing to give preference — Civil liability.
- 65-512. Education and technical assistance.
- 65-513. Preference by private employers.

65-501. Statement of purpose. — It is the intent of the legislature to honor veterans of the armed forces by providing preference in initial appointments to public sector jobs in Idaho. Veterans' preference is intended to honor those citizens who have served their country in active duty by providing veterans a more favorable competitive position for government employment and acknowledging the larger sacrifice of disabled veterans. Eligible veterans are provided advantages in public employment in Idaho, including preference for initial employment and retention in the event of layoffs. Veterans' preference requires public employers to provide additional consideration for eligible veterans, but it does not guarantee the veteran a job.

History.

I.C., § 65-501, as added by 2006, ch. 51, § 1, p. 145; am. 2013, ch. 187, § 16, p. 447.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 187, substi-

tuted "Veterans'" for "Veteran's" at the beginning of the second and last sentences.

65-502. Definitions. — As used in this chapter:

(1) "Applicant" means an individual applying for a position with a public employer.

(2) "Armed forces" means the army, navy, marine corps, coast guard, air force, and the reserve components thereof.

(3) "Civil service position" means a position for which the public employee is selected from a pool of applicants through a competitive examination, a merit system or any other rating system based on experience and qualifications.

(4) "Disabled veteran" means those veterans separated under honorable conditions who:

(a) Qualify as disabled veterans because they have served on active duty in the armed forces and have a current service-connected disability of ten percent (10%) or more or are receiving compensation related to a service-connected disability including retirement benefits or pension from the military or the department of veterans affairs; or

(b) Are purple heart recipients.

(5) "Honorable conditions" means an honorable discharge or a general discharge "under honorable conditions."

(6) "Initial appointment" means the first time a qualified veteran is hired by a county or a municipal government or the state, provided however, subsequent separation from the county, municipal government or the state shall not result in the award of new preference or preference points with that governmental entity. "Initial appointment" shall not include:

(a) Jobs held by patients, inmates or students in or enrolled at a state institution;

(b) Temporary or casual employment; or

(c) An office filled by election.

(7) "Key employee" means an individual specifically hired for an "at will" position that is not a civil service position and where:

(a) The position requires an advanced degree and the exercise of independent judgment for a majority of the public employee's duties;

(b) The primary duty of the position is the management of a department or subdivision of the public employer and the position requires the exercise of independent judgment for a majority of position duties;

(c) The primary duty of the position is administrative work arising from the management of a department or subdivision of the public employer or administrative work arising from the exercise of the duties of an elected official and the public employee holds a confidential relationship to the appointing or employing officer or elected official; or

(d) The primary duty of the position is to provide advice or consultation to an elected official and the public employee holds a confidential relationship to the elected official.

(8) "Military duty" means training and service performed by an inductee, enlistee or reservist or any entrant into a component of the armed forces of the United States, provided "military duty" shall not include active duty training as a reservist in the armed forces of the United States or as a member of the national guard of the United States where the call is for training only.

(9) "Position" means a job held by a public employee but shall not include:

(a) A job held by a patient, inmate or student in or enrolled at a state institution;

(b) Temporary or casual employment; or

(c) An office filled by election.

(10) "Preference eligible" means an individual eligible for preference under section 65-503, Idaho Code.

(11) "Public employee" means any person holding a position in public employment.

(12) "Public employer" means any government, department or agency mentioned in subsection (13) of this section employing a public employee in a position.

(13) "Public employment" means employment by the government of this state, or by any county, municipality or other political subdivision of the state, including any department or agency thereof.

(14) "Register" means a list of names of persons who have been determined to be eligible for employment in a civil service position.

(15) "Service-connected disability" means that the veteran is disabled due to injury or illness that was incurred in or aggravated by military service as certified by the federal veterans administration or an agency of the department of defense.

(16) "Temporary or casual employment" means employment for a brief, nonrecurrent period where there is no reasonable expectation that such employment will continue indefinitely or for a significant period of time.

(17) "Veteran" means any person who has been discharged or released from active duty in the armed forces under honorable conditions provided they have served on active duty for a minimum of one hundred eighty (180) consecutive days. As used in this subsection and chapter, "active duty" means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the secretary of the military department concerned.

History.

I.C., § 65-502, as added by 2006, ch. 51,

§ 2, p. 145; am. 2011, ch. 284, § 1, p. 772; am. 2013, ch. 188, § 1, p. 465.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 284, added subsections (1), (3), and (10), redesignating the other subsections and updating the internal references; substituted "veterans separated under honorable conditions" for "honorably separated veterans" in the introductory paragraph of subsection (4); rewrote the introductory paragraph in present subsection (7), adding paragraphs (a) to (d); substituted "civil service position" for "classified position as determined on the basis of examination and merit factors as established in a civil service system" in present subsection (14); added, "been discharged or released from active duty in the armed forces under honorable conditions and has" at the end of the introductory paragraph in subsection (17); and updated the federal reference in paragraph (17)(d).

The 2013 amendment, by ch. 188, rewrote subsection (17), which formerly read: "Veteran" means any person who has been dis-

charged or released from active duty in the armed forces under honorable conditions and has (a) Served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955; (b) Served on active duty as defined in 38 U.S.C. section 101(21) at any time in the armed forces for a period of more than one hundred eighty (180) consecutive days, any part of which occurred after January 31, 1955, and before October 15, 1976, not including service under 10 U.S.C. section 12103(d) pursuant to an enlistment in the army national guard or the air national guard or as a reserve for service in the army reserve, naval reserve, air force reserve, marine corps reserve or coast guard reserve; (c) Served on active duty as defined in 38 U.S.C. section 101(21) in the armed forces during the period beginning on August 2, 1990, and ending on January 2, 1992; or (d) Served as may be further defined in 5 U.S.C. section 2108."

65-503. Eligibility for preference. — The following individuals are eligible for preference.

(1) Veterans and disabled veterans as defined in section 65-502, Idaho Code;

(2) A widow or widower of any veteran as long as he or she remains unmarried;

(3) The wife or husband of a service-connected disabled veteran if the

veteran cannot qualify for any public employment because of a service-connected disability.

History.

1949, ch. 279, § 2, p. 571; am. 1972, ch. 51, § 1, p. 90; am. 1973, ch. 95, § 1, p. 163; am. 1976, ch. 197, § 1, p. 717; am. 1985, ch. 150,

§ 1, p. 400; am. 1991, ch. 303, § 1, p. 797; am. and redesign. 2006, ch. 51, § 4, p. 145; am. 2011, ch. 284, § 2, p. 772.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 284, rewrote

the section to the extent that a detailed comparison is impracticable.

65-503A. Employer obligations. — (1) Public employers must give notice in all announcements and advertisements of vacancies that preference in appointment will be given to preference applicants. Application forms must inquire whether the applicant is claiming veterans' preference and whether the applicant has previously claimed such a preference. An applicant claiming preference is responsible for providing required documentation at the time of making application. The employer must inform applicants of the requirements for documentation.

(2) In all public employment, excluding key employee positions, the hiring official shall give preference to preference eligible applicants.

(3) An application for appointment to a position will be accepted after the closing date of the examination from an applicant who was serving in the armed forces, or undergoing service-connected hospitalization up to one (1) year following discharge. The application must be submitted within one hundred twenty (120) days of the applicant's separation from the armed forces or hospitalization, prior to the expiration of any register established as a result of the examination, and prior to the selection for the position.

(4) A disabled veteran may file an application at any time up until a selection has been made for any position for which a register is then maintained as a source for future job openings, or for which a register is about to be established, provided he or she has not already been examined twice for the same position and grade for which application is made, does not have current eligibility on that register, or is not serving in a competitive position in the same grade for which application is made. If a register is not used as a part of the selection process, a disabled veteran may file an application after the closing date, but such application will only be considered if a selection has not been made and the selection process is still active.

(5) An appointing authority may refuse to accept an application from an otherwise qualified preference eligible applicant who is deemed unqualified through his or her actions. Examples of such actions include dismissal for cause from a public entity, a felony conviction, or conduct unbecoming a public employee. Such refusal must be supported by good cause and is appealable pursuant to section 65-506, Idaho Code.

History.

I.C., § 65-503A, as added by 2011, ch. 284, § 3, p. 772; am. 2013, ch. 187, § 17, p. 447.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 187, substi-

tuted "Veterans" for "Veteran's" in the second sentence in subsection (1).

65-504. Basic preference and addition of points to competitive examination ratings. — (1) An applicant who is preference eligible is entitled to a preference in initial appointment with a public employer over other applicants for the same position who are not more qualified.

(2) Application of preference in civil service positions:

(a) Five (5) points shall be added to the earned rating of any veteran and the widow or widower of any veteran as long as he or she remains unmarried. The names of all five (5) point preference eligible applicants shall be placed on the register in accordance with their augmented rating. The additional points added by reason of veterans' preference shall be used only for the purpose of initial appointment and not for the purpose of any promotion, transfer or reassignment.

(b) Ten (10) points shall be added to the earned rating of veterans discharged under honorable conditions who qualify as disabled veterans because they have served on active duty in the armed forces at any time and have a current service-connected disability of ten percent (10%) or more. Alternatively, ten (10) points shall be added to the earned rating of the widow or widower of any disabled veteran as long as he or she remains unmarried or the spouse of any eligible disabled veteran who cannot qualify for any public employment because of a service-connected disability. The names of all ten (10) point preference eligible applicants shall be placed on the register in accordance with their augmented rating. The additional points added by reason of veterans' preference shall be used only for the purpose of initial appointment and not for the purpose of any promotion, transfer or reassignment.

(c) Veterans discharged under honorable conditions who served on active duty in the armed forces at any time and have a current service-connected disability of thirty percent (30%) or more shall be offered an interview if they are one (1) of the qualified applicants on the register for the position. If applicants are not ranked, an interview must be offered to such veterans who fully meet all qualifications for the position. Notwithstanding this subsection, employers shall not be required to interview more than a total of ten (10) applicants regardless of the number of such qualified veteran applicants.

History.

1949, ch. 279, § 6, p. 571; am. 1972, ch. 51, § 5, p. 90; am. 1972, ch. 356, § 1, p. 1060; am. 2001, ch. 214, § 1, p. 844; am. 2002, ch. 134,

§ 1, p. 365; am. and redesign. 2006, ch. 51, § 5, p. 145; am. 2011, ch. 284, § 4, p. 772; am. 2014, ch. 26, § 1, p. 33.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 284, substituted "applicant who is preference eligible" for "individual who qualifies for a veteran's em-

ployment preference" in subsection (1); in subsection (2), added the introductory language and, in paragraph (a) substituted "preference eligible applicants" for "eligibles re-

sulting from any merit system or civil service examination" twice and deleted "when required to take competitive examination for any position in any state department, county or municipal government, which may now or which may hereafter require competitive examination under merit system or civil service plan of selecting employees" following "remains unmarried"; in paragraph (2)(c), substituted "of the qualified applicant on the

register for the position" for "of the top ten (10) qualified applicants"; and redesignated former subsections (2) through (4) as paragraphs (2)(a) through (2)(c).

The 2014 amendment, by ch. 26, in subsection (2), deleted "percentage" preceding "points" in the first sentence of paragraph (a) and in the first and second sentences of paragraph (b).

65-506. Failing or refusing to give preference — Civil liability. —

(1) Applicants who believe they have been denied a right or benefit under this chapter may file an appeal with the governing body of the jurisdiction or unit of government within thirty-five (35) days of the alleged denial of preference. If an applicant has notified the public employer of the applicant's eligibility for preference pursuant to section 65-503A, Idaho Code, the public employer shall provide notice of the appeal process at the conclusion of the selection process. If the public employer does not initiate the appeal process within thirty-five (35) days of a written request by the applicant, the applicant may file an appeal directly in district court pursuant to subsection (3) of this section. The thirty-five (35) day period for appeal shall commence upon the issuance of notice of the appeal process by the public employer. If the public employer fails to issue such notice, the thirty-five (35) day period for appeal shall commence when the applicant becomes aware that he was not selected for the position.

(2) The division of veterans services is authorized and directed to issue rules for the enforcement of this chapter. Such rules shall include, but are not limited to, procedures public employers may implement for an internal process which must be exhausted prior to gaining access to the courts.

(3) Any public employer who deliberately or willfully refuses or fails to give preference to qualified veterans required by the provisions of this chapter shall be subject to writs of mandate pursuant to sections 7-301 through 7-314, Idaho Code, and if found in violation of any such provisions shall be required to pay the costs of suit and reasonable attorney's fees incurred in such action, and may further be required to employ or reemploy the veteran, and shall be required to pay as damages such amount as the court may award, but in no event shall the amount of such damages and costs of suit exceed the sum of five thousand dollars (\$5,000) or ten percent (10%) of the annual salary of the position, whichever is higher. Such action must be commenced not more than one hundred eighty (180) days from the alleged denial of preference, provided however, applicants for classified state employment remain subject to the procedures set forth in section 67-5316, Idaho Code. If an appeal process is in place pursuant to subsection (1) of this section, the one hundred eighty (180) days will not begin until that process has been exhausted.

History.

1949, ch. 279, § 5, p. 571; am. 1972, ch. 51,

§ 4, p. 90; am. and redesign. 2006, ch. 51, § 7, p. 145; am. 2011, ch. 284, § 5, p. 772.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 284, in subsection (1), substituted “applicants” for “individuals” and “the” for “such” in the first sentence, inserted the second and fourth

sentences, and substituted the current third sentence for “If an appeal process does not exist for that jurisdiction or unit of government, the complainant may file directly in district court.”

65-512. Education and technical assistance. — To the extent of funds available therefor, the division of veterans services and the department of labor are authorized to provide programs of education and technical assistance to public employers, veterans and other interested parties concerning the provisions of this chapter.

History.

I.C., § 65-512, as added by S.L. 2011, ch. 284, § 6, p. 772.

65-513. Preference by private employers. — A private, nonpublic employer may give preference in the hiring and promotion of employees to those who are eligible for preference under the provisions of section 65-503, Idaho Code.

History.

I.C., § 65-513, as added by 2014, ch. 127, § 1, p. 360.

STATUTORY NOTES

Prior Laws.

Former § 65-513, Leave of absence for public employees who are not accepted for mili-

tary duty, which comprised 1951, ch. 175, § 4, p. 370, was repealed by S.L. 2006, ch. 51, § 14.

CHAPTER 6

SERVICE OFFICERS FOR AID OF VETERANS

SECTION.

65-602. Compensation and office of service officer.

65-602. Compensation and office of service officer. — The board of county commissioners shall fix the compensation, or a county contribution to the salary, of such service officer, provide the individual with an office and the necessary equipment therefor in the same manner as is provided for any other county officer under the provisions of section 31-1001, Idaho Code, and shall make provision in the budget for the employment of such service officer and the expense for the proper maintenance of such office. Payments therefor shall be from the general tax fund of the county or out of other available funds not otherwise appropriated.

History.

1946 (1st E. S.), ch. 27, § 2, p. 32; am. 2009, ch. 277, § 2, p. 840.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 277, in the first sentence, substituted “the individual” for

“him” and “section 31-1001, Idaho Code” for “chapter 31-1001.”

CHAPTER 7

IDAHO VETERANS RECOGNITION ACT

SECTION.

65-701. Purpose.

65-702. Idaho veterans recognition fund.

65-703. Distributions from the Idaho veterans recognition fund.

65-704. Idaho veterans recognition income fund.

SECTION.

65-705. Committee to prepare and recommend allocation plan.

65-706. Annual allocation plan.

65-701. Purpose. — The purpose of this chapter is to establish a program to recognize the service of Idaho veterans. This chapter is intended to support programs or organizations that serve veterans.

History.

I.C., § 65-701, as added by 2013, ch. 277, § 2, p. 716.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2013, ch. 277 provided: “Short title — Legislative Intent. This act shall be known as the ‘Idaho Veterans Recognition Act’ and shall establish a program to recognize the service of Idaho veterans. It is the intent of the Legislature that interest and

earnings from moneys in the Idaho Veterans Recognition Fund be transferred annually to the Idaho Veterans Recognition Income Fund, and that moneys in the Idaho Veterans Recognition Income Fund be used to benefit veterans in Idaho, with priority given to activities that support disabled veterans.”

65-702. Idaho veterans recognition fund. — (1) There is hereby created in the state treasury the “Idaho veterans recognition fund.” The state treasurer is hereby granted the authority to invest the assets of the fund in any investment instruments authorized by the standards of the Idaho uniform prudent investor act, chapter 5, title 68, Idaho Code.

(2) The fund shall consist of moneys appropriated from excess earnings from funds maintained by the division of veterans services and shall maintain its interest and investment earnings generated by such moneys in the fund.

(3) Money in the fund shall be used solely to benefit veterans in Idaho, with priority given to activities that serve disabled veterans.

History.

I.C., § 65-702, as added by 2013, ch. 277, § 2, p. 716.

STATUTORY NOTES

Cross References.

Division of veterans services, § 65-201 et seq.

State treasurer, § 67-1201 et seq.

Legislative Intent.

Section 1 of S.L. 2013, ch. 277 provided: "Short title — Legislative Intent. This act shall be known as the 'Idaho Veterans Recognition Act' and shall establish a program to

recognize the service of Idaho veterans. It is the intent of the Legislature that interest and earnings from moneys in the Idaho Veterans Recognition Fund be transferred annually to the Idaho Veterans Recognition Income Fund, and that moneys in the Idaho Veterans Recognition Income Fund be used to benefit veterans in Idaho, with priority given to activities that support disabled veterans."

65-703. Distributions from the Idaho veterans recognition fund.

— (1) On the first business day of each July, or as soon thereafter as possible, the administrator of the division of veterans services, as directed by the Idaho veterans recognition committee, shall request the state controller to make a transfer to the Idaho veterans recognition income fund.

(2) The amount of the transfer shall not exceed five percent (5%) of the Idaho veterans recognition fund's average monthly fair market value for the first twelve (12) months of the preceding twenty-four (24) months. Further, the distribution shall not exceed the Idaho veterans recognition fund's fair market value on the first business day in July.

History.

I.C., § 65-703, as added by 2013, ch. 277, § 2, p. 716.

STATUTORY NOTES

Cross References.

Division of veterans services, § 65-201 et seq.

State controller, § 67-1001 et seq.

Legislative Intent.

Section 1 of S.L. 2013, ch. 277 provided: "Short title — Legislative Intent. This act shall be known as the 'Idaho Veterans Recognition Act' and shall establish a program to

recognize the service of Idaho veterans. It is the intent of the Legislature that interest and earnings from moneys in the Idaho Veterans Recognition Fund be transferred annually to the Idaho Veterans Recognition Income Fund, and that moneys in the Idaho Veterans Recognition Income Fund be used to benefit veterans in Idaho, with priority given to activities that support disabled veterans."

65-704. Idaho veterans recognition income fund. — (1) There is hereby created in the state treasury the "Idaho veterans recognition income fund."

(2) The fund shall consist of moneys transferred from the Idaho veterans recognition fund.

(3) The fund shall be used solely to benefit veterans in Idaho, with priority given to activities that serve disabled veterans.

(4) Moneys in the Idaho veterans recognition income fund are subject to appropriation by the legislature.

(5) Any unencumbered moneys remaining in the fund on June 30 of each year shall be transferred back to the Idaho veterans recognition fund.

History.

I.C., § 65-704, as added by 2013, ch. 277, § 2, p. 716.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2013, ch. 277 provided: "Short title — Legislative Intent. This act shall be known as the 'Idaho Veterans Recognition Act' and shall establish a program to recognize the service of Idaho veterans. It is the intent of the Legislature that interest and

earnings from moneys in the Idaho Veterans Recognition Fund be transferred annually to the Idaho Veterans Recognition Income Fund, and that moneys in the Idaho Veterans Recognition Income Fund be used to benefit veterans in Idaho, with priority given to activities that support disabled veterans."

65-705. Committee to prepare and recommend allocation plan. —

(1) A committee consisting of seven (7) members, herein referred to as the Idaho veterans recognition committee, shall annually prepare a recommendation to the governor and the legislature on how to spend the available funds in the Idaho veterans recognition income fund. Committee members shall include the five members of the Idaho veterans affairs commission and two additional members to be appointed by the governor. At least one (1) of the members shall have served in a recent war or conflict engaged in by the government of the United States and at least one (1) member shall be a disabled veteran. For purposes of the appointment to the committee, a disabled veteran shall have a current service-connected disability of thirty percent (30%) or more.

(2) The committee shall:

- (a) Maintain a familiarity with the needs of veterans returning from armed service;
- (b) Establish priorities for use of moneys in the Idaho veterans recognition income fund; and
- (c) Make a recommendation each year to the governor and legislature on use of moneys in the Idaho veterans recognition income fund in the form of an annual allocation plan.

History.

I.C., § 65-705, as added by 2013, ch. 277, § 2, p. 716.

STATUTORY NOTES

Cross References.

Idaho veterans affairs commission, § 65-201.

Legislative Intent.

Section 1 of S.L. 2013, ch. 277 provided: "Short title — Legislative Intent. This act shall be known as the 'Idaho Veterans Recognition Act' and shall establish a program to

recognize the service of Idaho veterans. It is the intent of the Legislature that interest and earnings from moneys in the Idaho Veterans Recognition Fund be transferred annually to the Idaho Veterans Recognition Income Fund, and that moneys in the Idaho Veterans Recognition Income Fund be used to benefit veterans in Idaho, with priority given to activities that support disabled veterans."

65-706. Annual allocation plan. — (1) The annual allocation plan shall include, at a minimum:

- (a) A discussion of the previous year's budget, expenditure amounts, use of funds and program outcomes;
- (b) A progress update for current year activities;

- (c) A recommendation for the following year, including expected budget, proposed use of funds and timeline of expenditures; and
- (d) Identification of additional needs of Idaho veterans that resources within the fund are inadequate to address.

(2) In preparation of the plan, the committee shall solicit public comment in a public meeting.

(3) The committee shall submit the annual allocation plan to the administrator of the division of veterans services by August 1, or as soon thereafter as possible, each year.

(4) In addition to the requirements of chapter 35, title 67, Idaho Code, the division of veterans services shall include the annual allocation plan in its annual budget request.

History.

I.C., § 65-706, as added by 2013, ch. 277,
§ 2, p. 716.

STATUTORY NOTES**Cross References.**

Division of veterans services, § 65-201 et seq.

Legislative Intent.

Section 1 of S.L. 2013, ch. 277 provided: "Short title — Legislative Intent. This act shall be known as the 'Idaho Veterans Recognition Act' and shall establish a program to

recognize the service of Idaho veterans. It is the intent of the Legislature that interest and earnings from moneys in the Idaho Veterans Recognition Fund be transferred annually to the Idaho Veterans Recognition Income Fund, and that moneys in the Idaho Veterans Recognition Income Fund be used to benefit veterans in Idaho, with priority given to activities that support disabled veterans."

TITLE 66

STATE CHARITABLE INSTITUTIONS

CHAPTER.

1. STATE HOSPITALS, §§ 66-115, 66-116, 66-118.
3. HOSPITALIZATION OF MENTALLY ILL, §§ 66-317, 66-326 — 66-329, 66-338 — 63-339C, 66-342, 66-345, 66-356.
4. TREATMENT AND CARE OF THE DEVELOPMENTALLY

CHAPTER.

- DISABLED, §§ 66-401, 66-402, 66-404, 66-405, 66-408, 66-415 — 66-417.
5. STATE ASYLUM AND SANITARIUM FUND FOR PATIENTS, §§ 66-501, 66-503.
9. IDAHO VETERANS' HOME, § 66-908.

CHAPTER 1

STATE HOSPITALS

SECTION.

- 66-115. Officially naming the state hospitals.
- 66-116. Institutions under the jurisdiction of the board.

SECTION.

- 66-118. Powers and duties of the board — Hospitals managed by — Annual report.

66-115. Officially naming the state hospitals. — The hospital located at Blackfoot, in the county of Bingham, shall be known as the state hospital south; the hospital located at Orofino, in the county of Clearwater, shall be known as the state hospital north; the hospital located at Nampa, in the county of Canyon, shall be known as the southwest Idaho treatment center.

History.

1951, ch. 273, § 4, p. 574; am. 1965, ch. 33, § 1, p. 50; am. 2011, ch. 102, § 5, p. 260.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 102, substi-

tuted "southwest Idaho treatment center" for "Idaho State School and Hospital."

66-116. Institutions under the jurisdiction of the board. — State hospital south, state hospital north and southwest Idaho treatment center shall be under the management and control of the board of health and welfare.

History.

1951, ch. 273, § 5, p. 574; am. 1965, ch. 32, § 1, p. 50; am. 1969, ch. 133, § 1, p. 416; am.

1981, ch. 114, § 7, p. 169; am. 2011, ch. 102, § 6, p. 260.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 102, substi-

tuted "southwest Idaho treatment center" for "Idaho State School and Hospital."

66-118. Powers and duties of the board — Hospitals managed by — Annual report. — The board shall have complete authority to manage and operate the state hospital north, at Orofino; the state hospital south, at Blackfoot; the southwest Idaho treatment center at Nampa; with authority to establish professional standards of qualifications for doctors, nurses, superintendents, general managers, farm managers, attendants, and all other personnel and may employ a general business manager for each of said hospitals, and hospital personnel at said hospitals and medical superintendents for each of said hospitals, at its discretion, or a superintendent, or director, or manager who may be over all hospitals. The board shall have complete authority to, or it is the duty of the board:

(1) To make rules for the government of said hospitals and to define the duties of all employees; provided, that the members of the board shall not be personally liable for any act of any employee done in violation of any law, or contrary to any rule of the board; nor shall any administrative employee of the board be responsible for the act of any other employee done in violation of any laws of the state, or rule of the board, or order of the administrative employee;

(2) To receive, take and hold property, both real and personal, in trust for the state and for the use and benefit of such hospitals;

(3) To visit each of said hospitals at such times as it deems necessary and to keep itself advised of all expenses and the condition of buildings and property, the safety and treatment of patients, and require the general manager or superintendent to make periodic reports as to the condition of each hospital and treatment of the patients;

(4) To require the keeping of a complete and accurate set of books of each hospital in accordance with the accounting required of other institutions of the state; to examine and audit the expenditures of each hospital and to certify the same to the state controller. The board shall require that all itemized bills, purchases and other expenditures made, must be examined and approved by the head of the hospital making such purchases or expenditures and then the same must be certified by the board, and transmitted to the state controller to be reviewed and allowed in the same manner as other accounts against the state are reviewed and allowed. When allowed the state controller must draw his warrant on the state treasurer for the amount so reviewed and allowed, and the state treasurer is hereby authorized and required to pay the same out of any money in the state treasury appropriated therefor;

(5) To make rules and fix the terms and conditions of payment of costs of care and treatment of mentally ill persons who are not indigent or who are not residents of the state, who are admitted to said state hospital north, state hospital south, or southwest Idaho treatment center, all receipts from such persons to be paid into the state treasury and credited to salaries and wages, other current expense, or capital outlay of the general fund of the remitting hospital, at the discretion of the board;

(6) To enter into reciprocal agreements with similar boards of other states for the transfer of residents of those states, who have been involuntarily hospitalized to any of the aforesaid hospitals in this state, or the transfer of

Idaho residents, who have been involuntarily hospitalized to similar hospitals in those states, to the appropriate hospital in this state;

(7) To recognize that or to proceed on the fact that any order of involuntary hospitalization of an Idaho resident, by judicial action of another state, shall be sufficient for admitting such resident, without further judicial action in this state, to a similar hospital in this state;

(8) To remove patients in case of necessity, or when they feel it is for the betterment of the patient's welfare, to an appropriate place at the discretion of the board, and to make necessary negotiations to carry out such a procedure;

(9) To purchase insurance for any of the medical staff in any of the hospitals against liability for alleged malpractice by reason of any act, or omission, while in the service of the state of Idaho;

(10) To remove and transfer from one (1) state hospital to another, or from a state hospital to a private hospital, or to a hospital of another state, or other government agency, any person confined therein, for the purpose of grouping together classes of mentally ill persons, or to give them better medical aid and care;

(11) To report to the governor each year, a statement of receipts and expenditures, the condition of each hospital, the number of patients under treatment at each hospital during the preceding year and such other matters as may be pertinent, and to make an annual report to the governor in substantially the same manner on or before December 1 prior to each regular session of the legislature;

(12) To delegate to the head of the hospital, or to a director or superintendent, or manager of all hospitals the powers and duties vested by law in the board, at its discretion;

(13) To initiate, create, or promote procedures, policies and practices either as a body or in cooperation with other governmental departments or agencies for the general welfare and betterment of the mental health of the people of the state of Idaho.

History.

1951, ch. 273, § 7, p. 574; am. 1955, ch. 168, § 1, p. 338; am. 1976, ch. 9, § 8, p. 25; am.

1994, ch. 180, § 161, p. 420; am. 2003, ch. 32, § 34, p. 115; am. 2011, ch. 102, § 7, p. 260.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 102, redesignated the subsections numerically; in the introductory paragraph and in subsection (5),

substituted "southwest Idaho treatment center" for "Idaho State School and Hospital"; and, in subsection (11), substituted "December 1" for "the 1st day of December."

CHAPTER 3

HOSPITALIZATION OF MENTALLY ILL

SECTION.

66-317. Definitions.

66-326. Detention without hearing.

SECTION.

66-327. Responsibility for costs of commitment and care of patients.

SECTION.

- 66-328. Jurisdiction of proceedings for commitment.
- 66-329. Commitment to department director upon court order — Judicial procedure.
- 66-338. Conditional release. [Repealed.]
- 66-339. Rehospitalization of patients conditionally released from inpatient treatment facilities — Procedure. [Repealed.]

SECTION.

- 66-339A. Outpatient commitment. [Repealed.]
- 66-339B. Outpatient commitment hearing. [Repealed.]
- 66-339C. Noncompliance with court order. [Repealed.]
- 66-342. Change in disposition — Appeal. [Repealed.]
- 66-345. Restraints and seclusion.
- 66-356. Relief from firearms disabilities.

66-317. Definitions. — As used in this chapter, terms shall have the following meanings:

(1) "Department director" means the director of the state department of health and welfare.

(2) "Voluntary patient" means an individual admitted to a facility for evaluation pursuant to section 18-211 or 20-520, Idaho Code, or admitted to a facility for observation, diagnosis, evaluation, care or treatment pursuant to section 66-318, Idaho Code.

(3) "Involuntary patient" means an individual committed pursuant to section 18-212, 66-329 or 66-1201, Idaho Code, or committed pursuant to section 16-1619 or 20-520, Idaho Code, and admitted to a facility for the treatment of minors.

(4) "Licensed physician" means an individual licensed under the laws of this state to practice medicine or a medical officer of the government of the United States while in this state in the performance of his official duties.

(5) "Designated examiner" means a psychiatrist, psychologist, psychiatric nurse, or social worker and such other mental health professionals as may be designated in accordance with rules promulgated pursuant to the provisions of chapter 52, title 67, Idaho Code, by the department of health and welfare. Any person designated by the department director will be specially qualified by training and experience in the diagnosis and treatment of mental or mentally related illnesses or conditions.

(6) "Dispositioner" means a designated examiner employed by or under contract with the department of health and welfare and designated by the department director to determine the appropriate location for care and treatment of involuntary patients.

(7) "Facility" means any public or private hospital, sanatorium, institution, mental health center or other organization designated in accordance with rules adopted by the board of health and welfare as equipped to initially hold, evaluate, rehabilitate or to provide care or treatment, or both, for the mentally ill.

(8) "Lacks capacity to make informed decisions about treatment" means the inability, by reason of mental illness, to achieve a rudimentary understanding after conscientious efforts at explanation of the purpose, nature, and possible significant risks and benefits of treatment.

(9) "Inpatient treatment facility" means a facility in which an individual receives medical and mental treatment for not less than a continuous twenty-four (24) hour period.

(10) "Supervised residential facility" means a facility, other than the

individual's home, in which the individual lives and in which there lives, or are otherwise on duty during the times that the individual's presence is expected, persons who are employed to supervise, direct, treat or monitor the individual.

(11) "Likely to injure himself or others" means either:

(a) A substantial risk that physical harm will be inflicted by the proposed patient upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or

(b) A substantial risk that physical harm will be inflicted by the proposed patient upon another as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or

(c) The proposed patient lacks insight into his need for treatment and is unable or unwilling to comply with treatment and, based on his psychiatric history, clinical observation or other clinical evidence, if he does not receive and comply with treatment, there is a substantial risk he will continue to physically, emotionally or mentally deteriorate to the point that the person will, in the reasonably near future, inflict physical harm on himself or another person.

(12) "Mentally ill" means a person, who as a result of a substantial disorder of thought, mood, perception, orientation, or memory, which grossly impairs judgment, behavior, capacity to recognize and adapt to reality, requires care and treatment at a facility or through outpatient treatment.

(13) "Gravely disabled" means a person who, as the result of mental illness, is:

(a) In danger of serious physical harm due to the person's inability to provide for any of his own basic personal needs, such as nourishment, or essential clothing, medical care, shelter or safety; or

(b) Lacking insight into his need for treatment and is unable or unwilling to comply with treatment and, based on his psychiatric history, clinical observation or other clinical evidence, if he does not receive and comply with treatment, there is a substantial risk he will continue to physically, emotionally or mentally deteriorate to the point that the person will, in the reasonably near future, be in danger of serious physical harm due to the person's inability to provide for any of his own basic personal needs such as nourishment, essential clothing, medical care, shelter or safety.

(14) "Outpatient treatment" means mental health treatment, not involving the continuous supervision of a person in an inpatient setting, that is reasonably designed to alleviate or to reduce a person's mental illness or to maintain or prevent deterioration of the person's physical, mental or emotional functioning. Mental health services or treatment may include, but need not be limited to, taking prescribed medication, reporting to a facility to permit monitoring of the person's condition, or participating in individual or group therapy.

(15) "Protection and advocacy system" means the agency designated by the governor as the state protection and advocacy system pursuant to 42 U.S.C. section 15043 and 42 U.S.C. sections 10801 et seq.

(16) "Holding proceedings in abeyance" means an alternative to judicial commitment based upon an agreement entered into by all parties, including

the proposed patient, and agreed to by the court, providing for voluntary conditions of treatment, which holds in a state of suspension or inactivity the petition for involuntary commitment.

History.

1951, ch. 290, § 1, p. 622; am. 1959, ch. 207, § 1, p. 439; am. 1969, ch. 187, § 1, p. 552; am. 1972, ch. 44, § 1, p. 67; am. 1973, ch. 173, § 1, p. 363; am. 1974, ch. 165, § 5, p. 1405; am. 1981, ch. 114, § 9, p. 169; am. 1982, ch. 59, § 6, p. 91; am. 1986, ch. 84, § 1, p. 243; am.

1998, ch. 90, § 1, p. 315; am. 2001, ch. 107, § 21, p. 350; am. 2002, ch. 128, § 1, p. 357; am. 2003, ch. 249, § 2, p. 641; am. 2004, ch. 315, § 1, p. 885; am. 2005, ch. 391, § 59, p. 1263; am. 2006, ch. 214, § 2, p. 645; am. 2008, ch. 331, § 1, p. 910.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 331, added paragraph (11)(c); in subsection (12), added “or through outpatient treatment”; subdivided subsection (13), and in paragraph (3)(a), substituted “his own basic personal needs, such as nourishment, or essential clothing,

medical care, shelter or safety” for “his basic needs for nourishment, or essential medical care, or shelter or safety”; added paragraph (3)(b); rewrote subsection (14), which formerly was the definition for “Outpatient commitment”; and added subsection (16).

66-324. Authority to receive involuntary patients.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of overt act requirement of state stat-

utes providing for commitment of sexually dangerous persons. 56 A.L.R.6th 647.

66-326. Detention without hearing. — (1) No person shall be taken into custody or detained as an alleged emergency patient for observation, diagnosis, evaluation, care or treatment of mental illness unless and until the court has ordered such apprehension and custody under the provisions outlined in section 66-329, Idaho Code; provided, however, that a person may be taken into custody by a peace officer and placed in a facility, or the person may be detained at a hospital at which the person presented or was brought to receive medical or mental health care, if the peace officer or a physician medical staff member of such hospital or a physician’s assistant or advanced practice registered nurse practicing in such hospital has reason to believe that the person is gravely disabled due to mental illness or the person’s continued liberty poses an imminent danger to that person or others, as evidenced by a threat of substantial physical harm; provided, under no circumstances shall the proposed patient be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses. For purposes of this section, the term “peace officer” shall include state probation and parole officers exercising their authority to supervise probationers and parolees. Whenever a person is taken into custody or detained under this section without court order, the evidence supporting the claim of grave disability due to mental illness or imminent danger must be presented to a duly authorized court within twenty-four (24) hours from the time the individual was placed in custody or detained.

(2) If the court finds the individual to be gravely disabled due to mental

illness or imminently dangerous under subsection (1) of this section, the court shall issue a temporary custody order requiring the person to be held in a facility, and requiring an examination of the person by a designated examiner within twenty-four (24) hours of the entry of the order of the court. Under no circumstances shall the proposed patient be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses.

(3) Where an examination is required under subsection (2) of this section, the designated examiner shall make his findings and report to the court within twenty-four (24) hours of the examination.

(4) If the designated examiner finds, in his examination under this section, that the person is mentally ill, and either is likely to injure himself or others or is gravely disabled due to mental illness, the prosecuting attorney shall file, within twenty-four (24) hours of the examination of the person, a petition with the court requesting the patient's detention pending commitment proceedings pursuant to the provisions of section 66-329, Idaho Code. Upon the receipt of such a petition, the court shall order his detention to await hearing which shall be within five (5) days (including Saturdays, Sundays and legal holidays) of the detention order. If no petition is filed within twenty-four (24) hours of the designated examiner's examination of the person, the person shall be released from the facility.

(5) Any person held in custody under the provisions of this section shall have the same protection and rights which are guaranteed to a person already committed to the department director. Upon taking a person into custody, notice shall be given to the person's immediate relatives of the person's physical whereabouts and the reasons for detaining or taking the person into custody.

(6) Nothing in this section shall preclude a hospital from transferring a person who has been detained under this section to another facility that is willing to accept the transferred individual for purposes of observation, diagnosis, evaluation, care or treatment.

History.

I.C., § 66-329A, as added by 1976, ch. 365, § 1, p. 1200; am. and redesign. 1981, ch. 114, § 19, p. 169; am. 1991, ch. 210, § 1, p. 494;

am. 1998, ch. 341, § 1, p. 1089; am. 2006, ch. 91, § 1, p. 265; am. 2006, ch. 214, § 5, p. 645; am. 2013, ch. 293, § 2, p. 770.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 293, inserted "or a physician's assistant or advanced prac-

tice registered nurse practicing in such hospital" in the first sentence in subsection (1).

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of overt act requirement of state stat-

utes providing for commitment of sexually dangerous persons. 56 A.L.R.6th 647.

66-327. Responsibility for costs of commitment and care of patients. — (a) All costs associated with the commitment proceedings, including fees of designated examiners, transportation costs and all medi-

cal, psychiatric and hospital costs not included in subsection (c) of this section, shall be the responsibility of the person subject to judicial proceedings authorized by this chapter or such person's spouse, adult children, or, if indigent, the county of such person's residence after all personal, family and third party resources, including medical assistance provided under the state plan for medicaid as authorized by title XIX of the social security act, as amended, are considered. In proceedings authorized by this chapter, the court shall consider the indigency of persons subject to proceedings authorized by this chapter, in light of such person's income and resources, and if such person is able to pay all or part of such costs, the court shall order such person to pay all or any part of such costs. If the court determines such person is unable to pay all or any part of such costs, the court shall fix responsibility, in accordance with the provisions of chapter 35, title 31, Idaho Code, for payment of such costs on the county of such person's residence to the extent not paid by such person or not covered by third party resources, including medical assistance as aforesaid. The amount of payment by a county shall be the medicaid rate, or pursuant to the provisions of any contract between a provider and an obligated county, or if the facility providing the services is a freestanding mental health facility, then the reimbursement rate will be the medicaid rate, for a hospital as defined by section 39-1301(a), Idaho Code, that provides services within the nearest proximity of the mental health facility. Such costs fixed by the court shall be based upon the time services were provided.

(b) An order of commitment pursuant to the provisions of this section shall be sufficient to require the release of all pertinent information related to the committed person, to the court and obligated county, within the restrictions of all applicable federal and state laws.

(c) The department of health and welfare shall assume responsibility for costs after the involuntary patient is committed to the custody of the state of Idaho, beginning on the day after the director receives notice that a person has been committed into the custody of the department, until the involuntary patient is discharged and after all personal, family and third party resources are considered in accordance with section 66-354, Idaho Code. The counties shall be responsible for mental health costs as defined in subsection (a) of this section if the individual is not transported within twenty-four (24) hours of receiving written notice of admission availability to a state facility. For purposes of this section, "costs" shall include routine board, room and support services rendered at a facility of the department of health and welfare; routine physical, medical, psychological and psychiatric examination and testing; group and individual therapy, psychiatric treatment, medication and medical care which can be provided at a facility of the department of health and welfare. The term "costs" shall not include neurological evaluation, CAT scan, surgery, medical treatment, any other item or service not provided at a facility of the department of health and welfare, or witness fees and expenses for court appearances. For the purposes of this section, the notice to the department may be faxed or mailed.

History.

I.C., § 66-327, as added by 1981, ch. 114,

§ 16, p. 169; am. 2000, ch. 161, § 1, p. 409; am. 2012, ch. 203, § 1, p. 543.

STATUTORY NOTES**Amendments.**

The 2012 amendment by ch. 203, deleted “usual and customary” preceding “fees” near the beginning of the first sentence and added the last two sentences in subsection (a); added subsection (b), redesignating former subsection (b) as present subsection (c) and updating an internal reference; and, in subsection (c), deleted “usual and customary treatment” preceding the first instance of “costs,” substituted “committed to the custody” for “disposed

to the custody” and inserted “as defined in subsection (a) of this section” in the first sentence; and deleted “usual and customary treatment” preceding “costs” in the second and third sentences.

Federal References.

Title XIX of the Social Security Act, referred to in subsection (a) of this section, is compiled as 42 U.S.C.S. §§ 1396 to 1396k.

JUDICIAL DECISIONS**ANALYSIS****Procedure.**

Reimbursement rate.

Procedure.

Magistrate must consider indigency and fix costs during commitment proceedings, considering an individual's financial situation and determining his ability to pay commitment costs. If such person was unable to pay the costs, then the court is required to fix responsibility for payment. *Bonner County v. Kootenai Hosp. Dist.* (In re Daniel W.), 145 Idaho 677, 183 P.3d 765 (2008), overruled on other grounds, *Verksa v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

Reimbursement Rate.

The placement of the reference to chapter 35, title 31, Idaho Code, in subsection (a) supports the conclusion that chapter 35, title 31 controls the determination of whether a given county is responsible for costs, but does not control the determination of the rate at which the county is responsible for those costs. *BHC Intermountain Hosp., Inc. v. Ada County*, 150 Idaho 93, 244 P.3d 237 (2010).

66-328. Jurisdiction of proceedings for commitment. — Proceedings for the care of mentally ill persons shall be had in the district court of the county where the person to be treated resides or in the district court of any other county of this state where such person is found.

History.

I.C., § 66-328, as added by 1961, ch. 165, § 1, p. 255; am. 1973, ch. 173, § 8, p. 363; am.

1974, ch. 165, § 7, p. 1405; am. 1981, ch. 114, § 17, p. 169; am. 2008, ch. 331, § 2, p. 912.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 331, deleted

language regarding filing and hearing costs and other fees from the end of the section.

66-329. Commitment to department director upon court order — Judicial procedure. — (1) Proceedings for the involuntary care and treatment of mentally ill persons by the department of health and welfare may be commenced by the filing of a written application with a court of competent jurisdiction by a friend, relative, spouse or guardian of the proposed patient, by a licensed physician, by a physician's assistant or advanced practice registered nurse practicing in a hospital, by a prosecuting

attorney or other public official of a municipality, county or of the state of Idaho, or by the director of any facility in which such patient may be.

(2) The application shall state the name and last known address of the proposed patient; the name and address of either the spouse, guardian, next of kin or friend of the proposed patient; whether the proposed patient can be cared for privately in the event commitment is not ordered; if the proposed patient is, at the time of the application, a voluntary patient; whether the proposed patient has applied for release pursuant to section 66-320, Idaho Code; and a simple and precise statement of the facts showing that the proposed patient is mentally ill and either likely to injure himself or others or is gravely disabled due to mental illness.

(3) Any such application shall be accompanied by a certificate of a designated examiner stating that he has personally examined the proposed patient within the last fourteen (14) days and is of the opinion that the proposed patient is: (i) mentally ill; (ii) likely to injure himself or others or is gravely disabled due to mental illness; and (iii) lacks capacity to make informed decisions about treatment, or a written statement by the applicant that the proposed patient has refused to submit to examination by a designated examiner.

(4) Upon receipt of an application for commitment, the court shall, within forty-eight (48) hours, appoint another designated examiner to make a personal examination of the proposed patient or if the proposed patient has not been examined, the court shall appoint two (2) designated examiners to make individual personal examinations of the proposed patient and may order the proposed patient to submit to an immediate examination. If neither designated examiner is a physician, the court shall order a physical examination of the proposed patient. At least one (1) designated examiner shall be a psychiatrist, licensed physician or licensed psychologist. The designated examiners shall report to the court their findings within the following seventy-two (72) hours as to the mental condition of the proposed patient and his need for custody, care, or treatment by a facility. The reports shall be in the form of written certificates which shall be filed with the court. The court may terminate the proceedings and dismiss the application without taking any further action in the event the reports of the designated examiners are to the effect that the proposed patient is not mentally ill or, although mentally ill, is not likely to injure himself or others or is not gravely disabled due to mental illness. If the proceedings are terminated, the proposed patient shall be released immediately.

(5) If the designated examiner's certificate states a belief that the proposed patient is mentally ill and either likely to injure himself or others or is gravely disabled due to mental illness, the judge of such court shall issue an order authorizing any health officer, peace officer, or director of a facility to take the proposed patient to a facility in the community in which the proposed patient is residing or to the nearest facility to await the hearing and for good cause may authorize treatment during such period subject to the provisions of section 66-346(a)(4), Idaho Code. Under no circumstances shall the proposed patient be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses.

(6) Upon receipt of such application and designated examiners' reports the court shall appoint a time and place for hearing not more than seven (7) days from the receipt of such designated examiners' reports and thereupon give written notice of such time and place of such hearing together with a copy of the application, designated examiner's certificates, and notice of the proposed patient's right to be represented by an attorney, or if indigent, to be represented by a court-appointed attorney, to the applicant, to the proposed patient, to the proposed patient's spouse, guardian, next of kin or friend. With the consent of the proposed patient and his attorney, the hearing may be held immediately. Upon motion of the proposed patient and attorney and for good cause shown, the court may continue the hearing up to an additional fourteen (14) days during which time, for good cause shown, the court may authorize treatment.

(7) An opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel in accordance with chapter 8, title 19, Idaho Code, no later than the time the application is received by the court.

(8) If the involuntary detention was commenced under this section, the hearing shall be held at a facility, at the home of the proposed patient, or at any other suitable place not likely to have a harmful effect on the proposed patient's physical or mental health. Venue for the hearing shall be in the county of residence of the proposed patient or in the county where the proposed patient was found immediately prior to commencement of such proceedings.

(9) In all proceedings under this section, any existing provision of the law prohibiting the disclosure of confidential communications between the designated examiner and proposed patient shall not apply and any designated examiner who shall have examined the proposed patient shall be a competent witness to testify as to the proposed patient's condition.

(10) The proposed patient, the applicant, and any other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The proposed patient shall be required to be present at the hearing unless the court determines that the mental or physical state of the proposed patient is such that his presence at the hearing would be detrimental to the proposed patient's health or would unduly disrupt the proceedings. A record of the proceedings shall be made as for other civil hearings. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure. The court shall receive all relevant and material evidence consistent with the rules of evidence.

(11) If, upon completion of the hearing and consideration of the record, and after consideration of reasonable alternatives including, but not limited to, holding the proceedings in abeyance for a period of up to thirty (30) days, the court finds by clear and convincing evidence that the proposed patient:

(a) Is mentally ill; and

(b) Is, because of such condition, likely to injure himself or others, or is gravely disabled due to mental illness;

the court shall order the proposed patient committed to the custody of the department director for observation, care and treatment for an indeterminate period of time not to exceed one (1) year. The department director, through his dispositioner, shall determine within twenty-four (24) hours the least restrictive available facility or outpatient treatment, consistent with the needs of each patient committed under this section for observation, care, and treatment.

(12) The commitment order constitutes a continuing authorization for the department of health and welfare, law enforcement, or director of a facility, upon request of the director of the outpatient facility, the physician, or the department director through his dispositioner, to transport a committed patient to designated outpatient treatment for the purpose of making reasonable efforts to obtain the committed patient's compliance with the terms and conditions of outpatient treatment. If the director of the outpatient facility, the treating physician, or the department director through his dispositioner determines any of the following:

- (a) The patient is failing to adhere to the terms and conditions of outpatient treatment or the patient refuses outpatient treatment after reasonable efforts at compliance have been made; or
- (b) Outpatient treatment is not effective after reasonable efforts have been made;

the department director through his dispositioner shall cause the committed patient to be transported by the department of health and welfare, law enforcement, or director of a facility to the least restrictive available facility for observation, care and treatment on an inpatient basis. Within forty-eight (48) hours of a committed patient's transfer from outpatient treatment to a facility for inpatient treatment, the department director through his dispositioner shall notify the court that originally ordered the commitment, the committed patient's attorney, and either the committed patient's spouse, guardian, adult next of kin or friend of the change in disposition and provide a detailed affidavit reciting the facts and circumstances supporting the transfer from outpatient treatment to inpatient treatment at a facility. The court shall conduct an ex parte review of the notice and affidavit within forty-eight (48) hours of filing and determine whether the change in disposition from outpatient treatment to inpatient treatment at a facility is supported by probable cause. In no event shall the calculation of forty-eight (48) hours provided for in this subsection include holidays formally recognized and observed by the state of Idaho, nor shall the calculation include weekends. If the court determines that probable cause exists, the department director through his dispositioner shall continue with care and treatment on an inpatient basis at the least restrictive available facility. Within twenty-four (24) hours of a finding of probable cause, the court shall issue an order to show cause why the patient does not meet the conditions in subsection (12)(a) or (12)(b) of this section. The order shall be served on the committed patient, the committed patient's attorney and either the committed patient's spouse, guardian, adult next of kin or friend. The patient shall have fifteen (15) days to present evidence that the conditions in subsection (12)(a) or (12)(b) of this section have not been met. In no event

shall the calculation of twenty-four (24) hours provided for in this subsection include holidays formally recognized and observed by the state of Idaho, nor shall the calculation include weekends. If the court determines that a change in disposition from outpatient treatment to inpatient treatment does not meet the conditions in subsection (12)(a) or (12)(b) of this section, the department director through his dispositioner will continue with outpatient treatment on the same or modified terms and conditions. Nothing provided in this section shall limit the authority of any law enforcement officer to detain a patient pursuant to the emergency authority conferred by section 66-326, Idaho Code.

(13) Nothing in this chapter or in any rule adopted pursuant thereto shall be construed to authorize the detention or involuntary admission to a hospital or other facility of an individual who:

(a) Has epilepsy, a developmental disability, a physical disability, an intellectual disability, is impaired by chronic alcoholism or drug abuse, or aged, unless in addition to such condition, such person is mentally ill;

(b) Is a patient under treatment by spiritual means alone, through prayer, in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof and who asserts to any authority attempting to detain him that he is under such treatment and who gives the name of a practitioner so treating him to such authority; or

(c) Can be properly cared for privately with the help of willing and able family or friends, and provided, that such person may be detained or involuntarily admitted if such person is mentally ill and presents a substantial risk of injury to himself or others if allowed to remain at liberty.

(14) The order of commitment shall state whether the proposed patient lacks capacity to make informed decisions about treatment, the name and address of the patient's attorney and either the patient's spouse, guardian, adult next of kin, or friend.

(15) If the patient has no spouse or guardian and if the patient has property which may not be cared for pursuant to chapter 5, title 66, Idaho Code, or by the patient while confined at a facility, the court shall appoint a guardian ad litem for the purpose of preserving the patient's estate, pending further guardianship or conservatorship proceedings.

(16) The commitment shall continue until the commitment is terminated and shall be unaffected by the patient's conditional release or change in disposition.

History.

1951, ch. 290, § 13, p. 622; am. 1953, ch. 264, § 1, p. 455; am. 1959, ch. 207, § 7, p. 439; am. 1969, ch. 143, § 1, p. 461; am. 1972, ch. 44, § 3, p. 67; am. 1973, ch. 173, § 9, p. 363; am. 1974, ch. 165, § 8, p. 1405; am. 1981,

ch. 114, § 18, p. 169; am. 1991, ch. 210, § 2, p. 494; am. 1998, ch. 78, § 1, p. 279; am. 1998, ch. 341, § 2, p. 1089; am. 2003, ch. 249, § 3, p. 641; am. 2008, ch. 331, § 3, p. 912; am. 2010, ch. 235, § 56, p. 542; am. 2013, ch. 293, § 3, p. 770.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 331, redesignated former alphabetical subsection designations numerically; in subsection (8), added “If the involuntary detention was commenced under this section” and substituted “or in the county where the proposed patient was found immediately prior to commencement of such proceedings” for “unless the patient waives the right to have venue fixed there”; in the introductory paragraph in subsection (11), inserted “and after consideration of reasonable alternatives including, but not limited to,

holding the proceedings in abeyance for a period of up to thirty (30) days”; in subsection (11)(b), inserted “observation, care and treatment for” and “or outpatient treatment”; and added subsection (12).

The 2010 amendment, by ch. 235, substituted “an intellectual disability” for “mental retardation” in paragraph (13)(a).

The 2013 amendment, by ch. 293, inserted “by a physician’s assistant or advanced practice registered nurse practicing in a hospital” in subsection (1).

66-338. Conditional release. [Repealed.]**STATUTORY NOTES****Compiler’s Notes.**

This section, which comprised 1951, ch. 290, § 22, p. 622; am. 1959, ch. 207, § 14, p. 439; am. 1969, ch. 29, § 1, p. 53; am. 1973, ch. 173, § 18, p. 363; am. 1974, ch. 165, § 15, p.

1405; am. 1981, ch. 114, § 26, p. 169; am. 1983, ch. 173, § 2, p. 479; am. 1998, ch. 90, § 2, p. 315; am. 2004, ch. 23, § 12, p. 25, was repealed by S.L. 2008, ch. 331, § 4.

66-339. Rehospitalization of patients conditionally released from inpatient treatment facilities — Procedure. [Repealed.]**STATUTORY NOTES****Compiler’s Notes.**

This section, which comprised I.C., § 66-339, as added by 1983, ch. 173, § 3, p. 479;

am. 1998, ch. 90, § 3, p. 315, was repealed by S.L. 2008, ch. 331, § 4.

66-339A. Outpatient commitment. [Repealed.]**STATUTORY NOTES****Compiler’s Notes.**

This section, which comprised I.C., § 66-

339A, as added by 1998, ch. 90, § 4, p. 315, was repealed by S.L. 2008, ch. 331, § 4.

66-339B. Outpatient commitment hearing. [Repealed.]**STATUTORY NOTES****Compiler’s Notes.**

This section, which comprised I.C., § 66-

339B, as added by 1998, ch. 90, § 5, p. 315, was repealed by S.L. 2008, ch. 331, § 4.

66-339C. Noncompliance with court order. [Repealed.]**STATUTORY NOTES****Compiler’s Notes.**

This section, which comprised I.C., § 66-

339C, as added by 1998, ch. 90, § 6, p. 315, was repealed by S.L. 2008, ch. 331, § 4.

66-342. Change in disposition — Appeal. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 66-

342, as added by 1981, ch. 114, § 30, p. 169, was repealed by S.L. 2008, ch. 331, § 4.

66-345. Restraints and seclusion. — Restraints shall not be applied to a patient nor shall a patient be secluded unless it is determined that such restraint or seclusion is necessary for the patient's safety or for the safety of others. Every instance of a restraint or seclusion of a patient shall be documented in the clinical record of the patient. In addition, every instance of a restraint or seclusion shall be evaluated and the evaluation and reasons for such restraint or seclusion shall be made a part of the clinical record of the patient under the signature of a licensed physician or, as delegated through the bylaws of the hospital's medical or professional staff, other practitioners licensed to practice independently. Whenever a peace officer deems it necessary to apply restraints to a patient while transporting the patient from one (1) facility to another and that restraint is against the medical advice of a licensed physician, the officer shall document the use of restraints in a report to be included in the clinical record.

History.

1951, ch. 290, § 29, p. 622; am. 1973, ch. 173, § 23, p. 363; am. 1981, ch. 114, § 32, p.

169; am. 2001, ch. 339, § 1, p. 1200; am. 2014, ch. 111, § 1, p. 321.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 111, added the last sentence in the section.

66-356. Relief from firearms disabilities. — (1) A court that:

- (a) Orders commitment pursuant to section 66-329, Idaho Code;
- (b) Orders commitment or treatment pursuant to section 66-406, Idaho Code;
- (c) Appoints a guardian pursuant to section 66-322, Idaho Code, or section 15-5-304, Idaho Code;
- (d) Appoints a conservator pursuant to section 15-5-407(b), Idaho Code;
- (e) Appoints a guardian or conservator pursuant to section 66-404, Idaho Code; or
- (f) Finds a defendant incompetent to stand trial pursuant to section 18-212, Idaho Code, shall make a finding as to whether the subject of the proceeding is a person to whom the provisions of 18 U.S.C. 922(d)(4) and (g)(4) apply. If the court so finds, the clerk of the court shall forward a copy of the order to the Idaho state police, which in turn shall forward a copy to the federal bureau of investigation, or its successor agency, for inclusion in the national instant criminal background check system database.

(2) A person who is subject to an order, including an appointment or finding described in subsection (1) of this section, may petition the magistrate division of the court that issued such order, or the magistrate division

of the district court of the county where the individual resides, to remove the person's firearms-related disabilities as provided in section 105(a) of P.L. 110-180. A copy of the petition for relief shall also be served on the director of the department of health and welfare and the prosecuting attorney of the county in which the original order, appointment or finding occurred, and such department and office may, as it deems appropriate, appear, support, object to and present evidence relevant to the relief sought by the petitioner. The court shall receive and consider evidence, including evidence offered by the petitioner, concerning:

- (a) The circumstances of the original order, appointment or finding;
- (b) The petitioner's mental health and criminal history records, if any;
- (c) The petitioner's reputation; and
- (d) Changes in the petitioner's condition or circumstances relevant to the relief sought.

The court shall grant the petition for relief if it finds by a preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. The petitioner may appeal a denial of the requested relief, and review on appeal shall be de novo. A person may file a petition for relief under this section no more than once every two (2) years.

(3) When a court issues an order granting a petition for relief under subsection (2) of this section, the clerk of the court shall immediately forward a copy of the order to the Idaho state police, which in turn shall immediately forward a copy to the federal bureau of investigation, or its successor agency, for inclusion in the national instant criminal background check system database.

History.

I.C., § 66-356, as added by 2010, ch. 267,
§ 1, p. 674.

CHAPTER 4

TREATMENT AND CARE OF THE DEVELOPMENTALLY DISABLED

SECTION.

- 66-401. Legislative intent.
- 66-402. Definitions.
- 66-404. Proceedings for appointment of guardians and conservators.
- 66-405. Order in protective proceedings.
- 66-408. Petition for reexamination of order of guardianship or commitment.
- 66-415. Receipt and acceptance of foreign guardianship or conservatorship.

SECTION.

- 66-416. Transfer of guardianship or conservatorship to a foreign jurisdiction.
- 66-417. Temporary recognition of foreign guardianship or conservatorship of developmentally disabled person.

66-401. Legislative intent. — It is hereby declared by the legislature of the state of Idaho in enacting chapter 4, title 66, Idaho Code, that the citizens of Idaho who have developmental disabilities are entitled to be diagnosed, cared for, and treated in a manner consistent with their legal

rights in a manner no more restrictive than for their protection and the protection of society, for a period no longer than reasonably necessary for diagnosis, care, treatment and protection, and to remain at liberty or be cared for privately except when necessary for their protection or the protection of society. Recognizing that every individual has unique needs and differing abilities, it is the purpose of the provisions of this chapter to promote the general welfare of all citizens by establishing a system which permits partially disabled and disabled persons to participate as fully as possible in all decisions which affect them, which assists such persons in meeting the essential requirements for their physical health and safety, protecting their rights, managing their financial resources, and developing or regaining their abilities to the maximum extent possible. The provisions of this chapter shall be liberally construed to accomplish these purposes.

History.

I.C., § 66-401, as added by 1982, ch. 59,
§ 7, p. 91; am. 2010, ch. 235, § 57, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, substituted “citizens of Idaho who have develop-

mental disabilities” for “developmentally handicapped citizens of the state” in the first sentence.

66-402. Definitions. — As used in this chapter:

- (1) “Adult” means an individual eighteen (18) years of age or older.
- (2) “Artificial life-sustaining procedures” means any medical procedure or intervention which utilizes mechanical means to sustain or supplant a vital function. Artificial life-sustaining procedures shall not include the administration of medication, and it shall not include the performance of any medical procedure deemed necessary to alleviate pain, or any procedure which could be expected to result in the recovery or long-term survival of the patient and his restoration to consciousness.
- (3) “Department” means the Idaho department of health and welfare.
- (4) “Director” means the director of the department of health and welfare.
- (5) “Developmental disability” means a chronic disability of a person which appears before the age of twenty-two (22) years of age and:
 - (a) Is attributable to an impairment, such as intellectual disability, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; and
 - (b) Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and
 - (c) Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated.
- (6) “Emancipated minor” means an individual between fourteen (14) and

eighteen (18) years of age who has been married or whose circumstances indicate that the parent-child relationship has been renounced.

(7) "Evaluation committee" means an interdisciplinary team of at least three (3) individuals designated by the director or his designee to evaluate an individual as required by the provisions of this chapter. Each committee must include a physician licensed to practice medicine in the state of Idaho, a licensed social worker and a clinical psychologist or such other individual who has a master's degree in psychology as designated by the department director. Each committee member must be specially qualified by training and experience in the diagnosis and treatment of persons with a developmental disability.

(8) "Facility" means the southwest Idaho treatment center, a nursing facility, an intermediate care facility, an intermediate care facility for people with intellectual disabilities, a licensed residential or assisted living facility, a group foster home, other organizations licensed to provide twenty-four (24) hour care, treatment and training to the developmentally disabled, a mental health center, or an adult and child development center.

(9) "Lacks capacity to make informed decisions" means the inability, by reason of developmental disability, to achieve a rudimentary understanding of the purpose, nature, and possible risks and benefits of a decision, after conscientious efforts at explanation, but shall not be evidenced by improvident decisions within the discretion allowed nondevelopmentally disabled individuals.

(10) "Likely to injure himself or others" means:

(a) A substantial risk that physical harm will be inflicted by the respondent upon his own person as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or

(b) A substantial risk that physical harm will be inflicted by the respondent upon another as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or

(c) That the respondent is unable to meet essential requirements for physical health or safety.

(11) "Manage financial resources" means the actions necessary to obtain, administer and dispose of real, personal, intangible or business property, benefits and/or income.

(12) "Meet essential requirements for physical health or safety" means the actions necessary to provide health care, food, clothing, shelter, personal hygiene and/or other care without which serious physical injury or illness would occur.

(13) "Minor" means an individual seventeen (17) years of age or less.

(14) "Protection and advocacy system" means the agency designated by the governor of the state of Idaho to provide advocacy services for people with disabilities pursuant to 42 U.S.C. section 6042.

(15) "Respondent" means the individual subject to judicial proceedings authorized by the provisions of this chapter.

History.

I.C., § 66-402, as added by 1982, ch. 59, § 7, p. 91; am. 1989, ch. 193, § 16, p. 475; am. 1999, ch. 293, § 1, p. 732; am. 2000, ch. 274,

§ 151, p. 799; am. 2006, ch. 284, § 1, p. 872; am. 2010, ch. 235, § 58, p. 542; am. 2011, ch. 102, § 8, p. 260.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 235, in paragraph (5)(a), substituted "intellectual disability" for "mental retardation"; and in subsection (8), substituted "people with intellectual disabilities" for "the mentally retarded."

The 2011 amendment, by ch. 102, substituted "southwest Idaho treatment center" for

"Idaho state school and hospital" in subsection (8).

Federal References.

Section 6042 of title 42 of the United States Code, referred to in subsection (14), was repealed by Act of Oct. 30, 2000, P.L. 106-402. See 42 U.S.C.S. § 15043.

66-404. Proceedings for appointment of guardians and conservators. — (1) A person with a developmental disability or any person interested in his welfare may petition for a finding of legal disability or partial legal disability and appointment of a guardian and/or conservator.

(2) The petition shall:

(a) State the names and addresses of the persons entitled to notice under subsection (4) of this section;

(b) Describe the impairments showing the respondent is developmentally disabled, the respondent's ability to receive, evaluate and communicate information, and the respondent's ability to manage financial resources and meet essential requirements for physical health or safety;

(c) State the nature and scope of guardianship and/or conservatorship services sought;

(d) Describe the respondent's financial condition, including significant assets, income and ability to pay for the costs of judicial proceedings; and

(e) State if the appointment is made by will pursuant to section 15-5-301, Idaho Code, and the name(s) and address(es) of the person(s) named in the will to be guardian.

(3) Upon filing of a petition, the court shall set a date for a hearing, appoint an attorney to represent the respondent in the proceedings unless the respondent has an attorney, and authorize an evaluation committee to examine the respondent, interview the proposed guardians and/or conservators and report to the court in writing. The report shall contain:

(a) A description of the nature and extent of the evaluation and the alleged impairments, if any;

(b) A description of the respondent's mental, emotional and physical condition; educational status; and adaptive and social skills;

(c) A description of the services, if any, needed by the respondent to meet essential requirements for physical health and safety, and/or manage financial resources;

(d) A recommendation regarding the type and extent of guardianship or conservatorship assistance, if any, required by the respondent and why no less restrictive alternative would be appropriate;

(e) An opinion regarding the probability that the extent of the respondent's disabilities may significantly lessen, and the type of services or

treatment which may facilitate improvement in the respondent's behavior, condition, or skills;

(f) The respondent's preference, if any, regarding the person or persons to be appointed as guardian and/or conservator;

(g) The suitability of the person or persons proposed as guardian and/or conservator; and

(h) The signature of each member of the evaluation committee with a statement of concurrence or nonconcurrence with the findings and any dissenting opinions or other comments of the members.

(4) Notice of the time and place of the hearing on the petition together with a copy of the petition shall be served no less than ten (10) days before the hearing on:

(a) The respondent;

(b) The respondent's spouse, parents and adult children, or if none, the respondent's closest relative, if any can be found; and

(c) Any person who is currently serving as guardian, conservator or who is providing care for the respondent.

Notice shall be served personally if the person to be served can be found within the state. If the person to be served cannot be found within the state, service shall be accomplished by registered mail to such person's last known address.

(5) The respondent is entitled to be present at the hearing in person, to present evidence, call and cross-examine witnesses, and to see or hear all evidence in the proceeding.

(6) At the hearing the court shall:

(a) Determine whether the respondent has a developmental disability;

(b) Evaluate the respondent's ability to meet essential requirements for physical health or safety and manage financial resources;

(c) Evaluate the ability of the proposed guardian and/or conservator to act in the respondent's best interests to manage the respondent's financial resources and meet essential requirements for the respondent's physical health or safety;

(d) Determine the nature and scope of guardianship or conservatorship services necessary to protect and promote the respondent's well-being; and

(e) Evaluate the ability of the respondent or those legally responsible to pay the costs associated with the judicial proceedings and fix responsibility therefor.

(7) No individual shall be appointed as guardian or conservator of an incapacitated person unless all of the following first occurs:

(a) The proposed guardian or conservator has submitted to and paid for a criminal history and background check conducted pursuant to section 56-1004A(2) and (3), Idaho Code;

(b) In the case of a petition for guardianship and pursuant to an order of the court so requiring, any individual who resides in the incapacitated person's proposed residence has submitted, at the proposed guardian's expense, to a criminal history and background check conducted pursuant to section 56-1004A(2) and (3), Idaho Code;

(c) The findings of such criminal history and background checks have been made available to the evaluation committee by the department of health and welfare; and

(d) The proposed guardian or conservator provided a report of his or her civil judgments and bankruptcies to the evaluation committee and all others entitled to notice of the guardianship or conservatorship proceeding pursuant to subsection (4) of this section.

(8) The provisions of paragraphs (a) and (d) of subsection (7) of this section shall not apply to an institution nor to a legal or commercial entity.

(9) Each proposed guardian and conservator and each appointed guardian and conservator shall immediately report any change in his or her criminal history and any material change in the information required by subsection (7) of this section to the evaluation committee, all others entitled to notice of the guardianship or conservatorship proceeding pursuant to subsection (4) of this section and to the court.

History.

I.C., § 66-404, as added by 1982, ch. 59, § 7, p. 91; am. 2009, ch. 86, § 2, p. 236; am. 2013, ch. 262, § 5, p. 640.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 86, added subsection (2)(e).

The 2013 amendment, by ch. 262, substituted "person with a developmental disability"

for "developmentally disabled person" in subsection (1); substituted "has a developmental disability" for "is developmentally disabled" in paragraph (6)(a); and added subsections (7), (8), and (9).

66-405. Order in protective proceedings. — (1) If it is determined that the respondent does not have a developmental disability but appears in need of protective services, the court may cause the proceeding to be expanded or altered for consideration under the uniform probate code.

(2) If it is determined that the respondent is able to manage financial resources and meet essential requirements for physical health or safety, the court shall dismiss the petition.

(3) If it is determined that the respondent has a developmental disability and is unable to manage some financial resources or meet some essential requirements for physical health or safety, the court may appoint a partial guardian and/or partial conservator on behalf of the respondent. An order establishing partial guardianship or partial conservatorship shall define the powers and duties of the partial guardian or partial conservator so as to permit the respondent to meet essential requirements for physical health or safety and to manage financial resources commensurate with his ability to do so, and shall specify all legal restrictions to which he is subject. A person for whom a partial guardianship or partial conservatorship has been appointed under this chapter retains all legal and civil rights except those which have by court order been limited or which have been specifically granted to the partial guardian or partial conservator by the court.

(4) If it is determined that the respondent has a developmental disability and is unable to manage financial resources or meet essential requirements for physical health or safety even with the appointment of a partial

guardian or partial conservator, the court may appoint a total guardian and/or total conservator.

(5) In the event that more than one (1) person seeks to be appointed guardian and/or conservator, the court shall appoint the person or persons most capable of serving on behalf of the respondent; the court shall not customarily or ordinarily appoint the department or any other organization or individual, public or private, that is or is likely to be providing services to the respondent. If an appointment of a guardian is made by will pursuant to section 15-5-301, Idaho Code, such appointment shall be entitled to preference as the guardian under this chapter, if the person so appointed by will is capable of serving on behalf of the respondent and the court finds that it is not in the best interests of the respondent to appoint a different person as guardian.

(6) Subject to the limitations of the provisions of subsection (7) of this section, guardians or conservators may have any of the duties and powers as provided in sections 15-5-312(1)(a) through (d), 15-5-424 and 15-5-425, Idaho Code, and as specified in the order. A guardian shall be required to report to the court at least annually on the status of the person with a developmental disability. A conservator shall be required to file with the court an inventory within ninety (90) days of appointment, an accounting at least annually, and a final accounting at the termination of the appointment of the conservator. All required inventories, accountings and reports shall be under oath or affirmation and shall comply with the Idaho supreme court rules. The court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

(7) No guardian appointed under this chapter shall have the authority to refuse or withhold consent for medically necessary treatment when the effect of withholding such treatment would seriously endanger the life or health and well-being of the person with a developmental disability. To withhold or attempt to withhold such treatment shall constitute neglect of the person and be cause for removal of the guardian. No physician or caregiver shall withhold or withdraw such treatment for a respondent whose condition is not terminal or whose death is not imminent. If the physician or caregiver cannot obtain valid consent for medically necessary treatment from the guardian, he shall provide the medically necessary treatment as authorized by section 39-4504(1)(i), Idaho Code.

(8) A guardian appointed under this chapter may consent to withholding or withdrawal of artificial life-sustaining procedures, only if the respondent:

(a) Has an incurable injury, disease, illness or condition, certified by the respondent's attending physician and at least one (1) other physician to be terminal such that the application of artificial life-sustaining procedures would not result in the possibility of saving or significantly prolonging the life of the respondent, and would only serve to prolong the moment of the respondent's death for a period of hours, days or weeks, and where both physicians certify that death is imminent, whether or not the life-sustaining procedures are used; or

(b) Has been diagnosed by the respondent's attending physician and at least one (1) other physician as being in a persistent vegetative state

which is irreversible and from which the respondent will never regain consciousness.

(9) Any person who has information that medically necessary treatment of a respondent has been withheld or withdrawn may report such information to adult protective services or to the Idaho protection and advocacy system for people with developmental disabilities, which shall have the authority to investigate the report and in appropriate cases to seek a court order to ensure that medically necessary treatment is provided.

If adult protective services or the protection and advocacy system determines that withholding of medical treatment violates the provisions of this section, they may petition the court for an ex parte order to provide or continue the medical treatment in question. If the court finds, based on affidavits or other evidence, that there is probable cause to believe that the withholding of medical treatment in a particular case violates the provisions of this section, and that the life or health of the patient is endangered thereby, the court shall issue an ex parte order to continue or to provide the treatment until such time as the court can hear evidence from the parties involved. Petitions for court orders under this section shall be expedited by the courts and heard as soon as possible. No bond shall be required of a petitioner under this section.

(10) No partial or total guardian or partial or total conservator appointed under the provisions of this section may without specific approval of the court in a proceeding separate from that in which such guardian or conservator was appointed:

- (a) Consent to medical or surgical treatment the effect of which permanently prohibits the conception of children by the respondent unless the treatment or procedures are necessary to protect the physical health of the respondent and would be prescribed for a person who does not have a developmental disability;
- (b) Consent to experimental surgery, procedures or medications; or
- (c) Delegate the powers granted by the order.

History.

I.C., § 66-405, as added by 1982, ch. 59, § 7, p. 91; am. 1999, ch. 293, § 2, p. 732; am. 2005, ch. 120, § 8, p. 380; am. 2007, ch. 196,

§ 19, p. 579; am. 2008, ch. 74, § 5, p. 198; am. 2009, ch. 86, § 3, p. 236; am. 2012, ch. 302, § 15, p. 825; am. 2013, ch. 262, § 6, p. 640; am. 2014, ch. 164, § 7, p. 460.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 74, updated the first section reference in subsection (6) in light of the 2008 amendment of § 15-5-312.

The 2009 amendment, by ch. 86, added the last sentence in subsection (5).

The 2012 amendment, by ch. 302, updated the reference at the end of subsection (7) in light of the 2012 amendment of section 39-4504.

The 2013 amendment, by ch. 262, substituted "does not have a developmental disability"

for "is not developmentally disabled" in the first sentence in subsection (1); substituted "has a developmental disability" for "is developmentally disabled" near the beginning of subsections (3) and (4); inserted paragraph (6)(i); and substituted "does not have a developmental disability" for "is not developmentally disabled" at the end of paragraph (10)(a).

The 2014 amendment, by ch. 164, rewrote subsection (6) to the extent that a detailed comparison is impracticable.

66-408. Petition for reexamination of order of guardianship or commitment. — All respondents admitted to a residential facility upon application of their parent or guardian or committed to the director shall be entitled to an annual review of their placement by an evaluation committee upon request therefor by the respondent, the respondent's guardian or attorney. In addition, all respondents committed pursuant to section 66-406, Idaho Code, or for whom an order for guardianship or conservatorship has been issued pursuant to section 66-405, Idaho Code, shall be entitled to a reexamination of the order for or conditions of their commitment, guardianship or conservatorship on their own petition, or that of their legal guardian, parent, attorney or friend, to the district court of the county in which the order was issued or in which they are found. Upon receipt of the petition, the court shall determine whether the conditions justifying the order or its conditions continue to exist.

History.

I.C., § 66-408, as added by 1982, ch. 59,
§ 7, p. 91; am. 2010, ch. 235, § 59, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, deleted the former last sentence, which read: "Within three (3) years of the effective date of this chapter, the department shall petition for the

re-examination of all individuals committed prior to the effective date of this chapter as being mentally retarded or mentally deficient and whose commitments have not been terminated."

66-415. Receipt and acceptance of foreign guardianship or conservatorship. — The receipt and acceptance of a foreign guardianship or conservatorship of a developmentally disabled person shall be regulated as set forth under chapter 9, title 15, Idaho Code.

History.

I.C., § 66-415, as added by 2008, ch. 73,
§ 6, p. 194.

66-416. Transfer of guardianship or conservatorship to a foreign jurisdiction. — The transfer of a guardianship or conservatorship of a developmentally disabled person to a foreign jurisdiction shall be regulated as set forth under chapter 10, title 15, Idaho Code.

History.

I.C., § 66-416, as added by 2008, ch. 73,
§ 6, p. 194.

66-417. Temporary recognition of foreign guardianship or conservatorship of developmentally disabled person. — The temporary recognition of a foreign guardianship or conservatorship of a developmentally disabled person shall be regulated as set forth under chapter 11, title 15, Idaho Code.

History.

I.C., § 66-417, as added by 2008, ch. 73,
§ 6, p. 194.

CHAPTER 5**STATE ASYLUM AND SANITARIUM FUND FOR
PATIENTS****SECTION.**

66-501. Creation of patients' trust fund.

66-503. Custody of money — Duty of superintendent or manager.

66-501. Creation of patients' trust fund. — There shall be established in the respective offices of the superintendents or managers of each state hospital and the southwest Idaho treatment center, a fund to be known as the patients' trust fund.

History.

1915, ch. 144, § 1, p. 316; reen. C.L.,
§ 783b; C.S., § 1192; I.C.A., § 64-301; am.

1947, ch. 56, § 4, p. 74; am. 1967, ch. 357, § 2,
p. 1004; am. 2011, ch. 102, § 9, p. 260.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 102, substi-

tuted "southwest Idaho treatment center" for
"Idaho state school and hospital."

66-503. Custody of money — Duty of superintendent or manager.
— All moneys so held in trust shall be kept by the superintendent or manager, subject to be returned to the person or persons from whom any part of such fund has been taken for deposit in trust, except any portion thereof applied to such patient's expenses while in said state hospital or the southwest Idaho treatment center or applied to the payment of the funeral expenses of said patient, upon his death, release or discharge from the said institution; provided however, that if any patient who dies or has been discharged or escaped from any state hospital or the southwest Idaho treatment center does not present, personally or through his legal guardian, heirs or assigns, a claim against the said trust fund for repayment to him of money to his credit in said trust fund for patients within five (5) years from the date of his death, discharge or escape as certified to the state controller of the state of Idaho by the officer in charge of said institutions, then the superintendent or manager shall pay over the money in the manner set forth in section 14-519, Idaho Code, provided however, that money held in trust for a deceased patient shall be transferred pursuant to section 14-113, Idaho Code.

History.

1915, ch. 144, § 3, p. 316; reen. C.L.,
§ 783d; C.S., § 1194; I.C.A., § 64-303; am.
1941, ch. 57, § 1, p. 116; am. 1947, ch. 56, § 6,

p. 74; am. 1967, ch. 357, § 4, p. 1004; am.
1994, ch. 180, § 162, p. 420; am. 2011, ch. 102,
§ 10, p. 260; am. 2012, ch. 215, § 5, p. 584.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 102, twice substituted "the southwest Idaho treatment center" for "Idaho state school and hospital."

The 2012 amendment, by ch. 215, substituted "in the manner set forth in section 14-519, Idaho Code, provided however, that

money held in trust for a deceased patient shall be transferred pursuant to section 14-113, Idaho Code" for "said money shall escheat to the state of Idaho and shall be transferred to the general fund thereof by the state controller and the superintendent" at the end of the section.

CHAPTER 9

IDAHO VETERANS' HOME

SECTION.

66-908. Receipt of resident funds.

66-908. Receipt of resident funds. — (1) Notwithstanding any other provision of law, the administrator of the division of veterans services or his designee may be appointed by the paying entity as a payee, fiduciary or other agent for the purposes of receiving funds payable to a resident of a veterans home of this state. Prior to appointing the administrator as a recipient of resident funds, the paying entity shall conduct its customary process for determining the need for the appointment and conclude that the appointment of the administrator complies with the laws, policies and procedures applicable to the paying entity. The administrator shall provide the resident with notice and an opportunity to appeal the appointment before accepting appointment as a recipient of the resident's funds. The process for appeal of the appointment shall be set forth in rules promulgated by the administrator.

(2) All moneys received pursuant to this section shall be kept by the administrator in trust for the benefit of the resident. The administrator may apply any portion of the funds held in trust to the expenses of the resident arising from residence at a veterans home. The administrator may apply funds not required for the expenses arising from residence at a veterans home to payment for other reasonable expenses of the resident.

(3) The administrator shall maintain an accounting of the funds received and distributed under this section. A copy of the accounting shall be available to the resident and to other parties designated by the resident.

(4) Upon a resident's discharge from a veterans home and the payment of all outstanding expenses of the resident known to the administrator, the administrator shall distribute funds held on behalf of the resident under this section to the resident or to his designee.

History.

I.C., § 66-908, as added by 2012, ch. 319, § 1, p. 874.

